Supporting Statement Part A
Medicare Advantage and Prescription Drug Program:
Communications and Marketing Provisions
CMS-10837, OMB 0938-1442

This is a revised collection of information request.

Background

In accordance with our statutory authority to develop marketing and communications standards under sections 1851(h), 1851(j), 1860D-1(b)(1)(B)(vi), and 1860D-4(l) of the Social Security Act (hereinafter, "the Act"), we promulgated the following changes to strengthen beneficiary protections and improve MA and Part D marketing in our April 12, 2023 (88 FR 22120) final rule (CMS-4201-F, RIN 0938-AU96):

(1) Reinstate the prohibition on MAOs and Part D sponsors marketing outside of their service areas (unless unavoidable) – FINALIZED AS PROPOSED;
(2) Reinstate the prohibition on sales presentations following educational events – FINALIZED AS PROPOSED;
(3) Reinstate the prohibition on distribution and collection of Scope of Appointment and Business Reply Cards by agents at educational events – FINALIZED WITH MODIFICATION: retain the prohibition on distribution and collection of Scope of Appointment documents, but allow business reply cards to be made available at events (as opposed to being distributed);
(4) Reinstate the prohibition on conducting a sales/marketing or enrollment meeting with a beneficiary before 48 hours after the beneficiary's initial consent to the meeting (via scope of appointment) FINALIZED WITH MODIFICATION: we are allowing certain exceptions to this requirement per comments we received including when beneficiaries lack transportation and cannot return after 48 hours, when beneficiaries have walked into an agents/broker's office and want to review plans immediately, and when waiting 48 hours would move the beneficiary's enrollment into a new month and thus change the effective date of the enrollment (or the option to enroll at all);
(5) Clarify the requirement of a plan to notify CMS of any agent that fails to adhere to CMS requirements – FINALIZED AS PROPOSED;
(6) Add the requirement that agents/brokers inform beneficiaries that the beneficiaries can obtain complete Medicare information from 1-800-MEDICARE, SHIPs, or Medicare.gov – FINALIZED AS PROPOSED;
(7) Require that agents/brokers ask a standardized list of questions prior to enrolling the beneficiary in a plan (CMS has already developed the questions as part of the Pre-Enrollment Check List) – FINALIZED AS PROPOSED;
(8) Require that agents/brokers inform beneficiaries of all the plans the agent/broker actually sells – FINALIZED WITH MODIFICATION: where this requirement applies to telephonic communications, the agent/broker need only mention how many organizations they represent and how many plans are available from these organizations; and
(9) Clarify the prohibition of the use of the term "Medicare" or CMS's logos in a way that is misleading or confusing or which misrepresents the plan – FINALIZED AS PROPOSED.

In our April 6, 2026 (91 FR 17384) final rule (CMS-4212-F, RIN 0938-AV63), we finalized three deregulatory changes to remove rules on the time and manner of beneficiary outreach. The changes are designed to improve the plan decision making process by creating a more convenient, beneficiary-friendly outreach experience and to reduce burden on beneficiaries, plans, and agents/brokers. With regard to CMS-4212-F, we finalized the following proposed provisions with no modifications:

(1) Eliminate the requirement for a 12-hour delay between an educational and marketing event – FINALIZED AS PROPOSED.
(2) Eliminate the 48-hour waiting period required between the Scope of Appointment (SOA) completion and a personal marketing appointment – FINALIZED AS PROPOSED.
(3) Eliminate the prohibition of the collection of SOA forms at educational events – FINALIZED AS PROPOSED.

Overall, the provisions from CMS-4212-F remove 2,091 responses, 523 hours, and $46,431, resulting in a total of 4,182 responses, 1,743 hours, and $157,590 from the remaining CMS-4201-F provisions. See sections 12 and 15 of this Supporting Statement for a more in-depth discussion of the burden estimates and the finalized changes.

There are no reporting instruments or instructions other than what was published in CMS-4201-F.

A. Justification

1. Need and Legal Basis

Section 1851(h) and (j) of the Act provides a structural framework for how MA organizations may market and communicate with beneficiaries and directs CMS to adopt standards related to prohibitions and limitations on marketing and communications activities. Section 1860D–1(b)(1)(B)(vi) of the Act directs that the Secretary use rules similar to and coordinated with the MA rules at section 1851(h) of the Act relating to approval of marketing material and application forms for Part D sponsors. Section 1860D–4(l) of the Act applies certain prohibitions under section 1851(h) of the Act to Part D sponsors in the same manner as such provisions apply to MA organizations (and agents, brokers, and other third parties representing MA organizations).

Section 1856(b)(1) of the Act provides CMS the authority to add additional standards to the MA program that the Secretary determines are necessary for CMS to carry out the program. In addition, sections 1876(i)(3)(D), 1857(e)(1), and 1860D-12(b)(3)(D) of the Act provide CMS with the authority to adopt additional contract terms for cost plans, MA plans, and Part D plans when necessary and appropriate. Under sections 1852(c) and 1860D-4(a) of the Act, CMS can require organizations to provide certain materials to Medicare beneficiaries concerning MA and Part D plan choices. These statutory provisions help ensure Medicare beneficiaries are informed and protected when making an election to enroll in an MA (including MA-PD) or Part D plan.

CMS has adopted regulations related to marketing and communications by MA organizations and Part D sponsors in 42 CFR part 422, subpart V, and 42 CFR part 423, subpart V; these regulations

include the specific standards and prohibitions in the statute as well as standards and prohibitions promulgated under the statutory authority granted to the agency. Additionally, under 42 CFR 417.428, most marketing and communications requirements in subpart V of part 422 also apply to section 1876 cost plans.

CMS has long provided further interpretation and sub-regulatory guidance for these regulations in the form of a manual titled, "Medicare Communications and Marketing Guidelines" (MCMG), previously known as "Medicare Marketing Guidelines."

In the Medicare and Medicaid Programs; Contract Year 2022 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, Medicaid Program, Medicare Cost Plan Program, and Programs of All-Inclusive Care for the Elderly Final Rule, CMS codified guidance contained in the MCMG by integrating it with existing regulations. In the Medicare Program; Contract Year 2024 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, Medicare Cost Plan Program, and Programs of All-Inclusive Care for the Elderly Final Rule (CMS-4201-F), CMS then finalized several changes to 42 CFR parts 422 and 423, subpart V, to strengthen beneficiary protections and improve MA and Part D marketing. The changes in CMS-4201-F focused on reversing the changes made previously that resulted in an increase in marketing-related complaints to CMS, and strengthened CMS's ability to ensure MA and Part D marketing to beneficiaries is not misleading, inaccurate, or confusing.

In CMS-4212-F, CMS finalized several changes to requirements regarding the time and manner of plans' outreach to beneficiaries. The primary changes include three changes to §§422.2264(c) and 423.2264(c) to remove rules on the time and manner of beneficiary outreach. In addition, at §§422.2264(c)(3), 423.2264(c)(3), 422.2274(b)(3), 423.2274(b)(3), 422.2274(c)(9)(ii), and 423.2274(c)(9)(ii), CMS finalized a few other regulatory changes to add specificity and clarify policy. In total, these changes and clarifications are designed to improve the enrollment decision-making process by creating a more convenient, beneficiary-friendly outreach experience and to reduce the burden on beneficiaries, plans, and agents/brokers. Furthermore, these changes align with the January 31, 2025, Executive Order 14192, "Unleashing Prosperity Through Deregulation" (hereinafter referred to as E.O. 14192).[1] E.O. 14192 describes the Administration's policy goals to promote prudent financial management and alleviate unnecessary regulatory burdens. Section 2 of E.O. 14192 states that it is the policy of the executive branch to be prudent and financially responsible in the expenditure of funds, from both public and private sources, and to alleviate unnecessary regulatory burdens placed on the American people. The changes CMS finalized in CMS-4212-F are deregulatory and therefore support the Administration's policy goals.

2. Information Users

MA organizations and Part D sponsors use the information, as do their first tier and downstream entities such as agents, brokers, third-party marketing organizations (TPMOs), and lead generators. Only MA and cost organizations and Part D sponsors are bound by the requirement to create and maintain policy and procedure records.

3. Use of Information Technology

[1] https://www.whitehouse.gov/presidential- actions/2025/01/unleashing-prosperity-through- deregulation/

MA organizations and Part D sponsors will edit their policy and procedure documents on their own computer systems. Otherwise, there are no information collection or reporting requirements involving the use of automated, electronic, or other technological collection techniques.

4. Duplication of Efforts

The information collection requirements discussed herein are not duplicated through any other effort.

5. Small Businesses

The collection of information will have a minimal impact on small businesses since MA organizations and Part D sponsors must possess an insurance license and be able to accept substantial financial risk. Generally, state statutory requirements effectively preclude small businesses from being licensed to bear risk needed to serve Medicare enrollees.

6. Less Frequent Collection

All of the collection of information requirements are one-time efforts to revise policies and procedures.

7. Special Circumstances

There are no special circumstances that would:

- Require respondents to report information to the agency;
- Require respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
- Require respondents to submit any documents;
- Require respondents to retain any records;
- Make use of a statistical survey that is not designed to produce valid and reliable results that can be generalized to the universe of study,
- Require the use of a statistical data classification that has not been reviewed and approved by OMB;
- Include a pledge of confidentiality that is not supported by authority established in statue or regulation that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
- Require respondents to submit proprietary trade secret, or other confidential information.

8. Federal Register/Outside Consultation

Serving as the 60-day notice, our proposed rule (CMS-4212-P, RIN 0938-AV63) published in the Federal Register on November 28, 2025 (90 FR 54894). Comments were received on the proposed rule, but none pertained to the COI section of the rule or the PRA.

Our final rule (CMS-4212-F; RIN 0938-AV63) published in the Federal Register on April 6, 2026 (91 FR 17384).

As we had inadvertently overlooked the submission of CMS-4212-P to OMB, we are making up for that oversight by publishing a 60-day Federal Register notice. The notice is expected to be published in September 2026.

9. Payments/Gifts to Respondents

There are no payments/gifts to respondents.

10. Confidentiality

No information is being collected or reported. As such, there are no confidentiality issues.

11. Sensitive Questions

All of the collection of information requirements are one-time efforts to revise policies and procedures. None of which are of a sensitive nature.

12. Information Collection Requirements and Associated Burden Estimates

Wages Data

To derive average (mean) costs, we are using data from the most current U.S. Bureau of Labor Statistics' (BLS's) National Occupational Employment and Wage Estimates (May 2025) for all salary estimates (https://www.bls.gov/oes/tables.htm). In this regard, the following table presents BLS's mean hourly wage, our estimated cost of fringe benefits and other indirect costs (calculated at 100 percent of salary), and our adjusted hourly wage.

National Occupational Employment and Wage Estimates

Occupational Title	Occupational Code	Mean Hourly Wage ($/hr)	Cost of Fringe Benefits and Other Indirect Costs ($/hr)	Adjusted Wage ($/hr)
Business Operations Specialists, All Other	13-1199	45.18	45.18	90.36

Adjusting our employee hourly wage estimates by a factor of 100 percent is a rough adjustment that is being used since fringe benefits and other indirect costs vary significantly from employer to employer and because methods of estimating these costs vary widely from study to study. In this regard, we believe that doubling the hourly wage to estimate costs is a reasonably accurate estimation method.

Information Collection Requirements and Associated Burden Estimates

For the reinstatement of the prohibition on MAOs and Part D sponsors marketing outside of their service areas (unless unavoidable), we estimate that it would take 30 minutes (0.5 hr) at $90.36/hr for a business operations specialist to change the MAO's policies and procedures. In aggregate, we estimate a burden of 349 hours (697 contracts x 0.5 hr) at a cost of $31,536 (349 hr x $90.36/hr).

For the clarification of the requirement of a plan to notify CMS of any agent that fails to adhere to CMS requirements, we estimate that it would take 30 minutes (0.5 hr) at $90.36/hr for a business operations specialist to change the MAO's policies and procedures. In aggregate, we estimate a burden of 349 hours (697 contracts x 0.5 hr) at a cost of $31,536 (349 hr x $90.36/hr).

For the requirement that agents/brokers inform beneficiaries that the beneficiaries can obtain complete Medicare information from 1-800-MEDICARE, SHIPs, or Medicare.gov, we estimate that it would take 30 minutes (0.5 hr) at $90.36/hr for a business operations specialist to change the MAO's policies and procedures. In aggregate, we estimate a burden of 349 hours (697 contracts x 0.5 hr) at a cost of $31,536 (349 hr x $90.36/hr).

For the requirement that agents/brokers ask a standardized list of questions prior to enrolling the beneficiary in a plan, we estimate that it would take 30 minutes (0.5 hr) at $90.36/hr for a business operations specialist to change the MAO's policies and procedures. In aggregate, we estimate a burden of 349 hours (697 contracts x 0.5 hr) at a cost of $31,536 (349 hr x $90.36/hr).

CMS has already developed the questions as part of the Pre-Enrollment Check List. CMS does not require agents/brokers to develop the questions themselves. As the questions were already developed, and the development was performed by CMS staff, development of the questions does not incur such burden on the part of any MA organizations.

For the requirement that agents/brokers inform beneficiaries of all the plans the agent/broker actually sells, we estimate that it would take 15 minutes (0.25 hr) at $90.36/hr for a business operations specialist to change the MAO's policies and procedures. In aggregate, we estimate a burden of 174 hours (697 contracts x 0.25 hr) at a cost of $15,723 (174 hr x $90.36/hr).

For the changes that clarify the prohibition of the use of the term "Medicare" or CMS's logos in a way that is misleading or confusing or which misrepresents the plan, we estimate that it would take 15 minutes (0.25 hr) at $90.36/hr for a business operations specialist to change the MAO's policies and procedures. In aggregate, we estimate a burden of 174 hours (697 contracts x 0.25 hr) at a cost of $15,723 (174 hr x $90.36/hr).

Summary of Collection of Information Requirements and Associated Burden Estimates

Requirement: Changes to Policies and Procedures	Number of Respondents	Number of Responses	Time per Response (hr)	Total Time (hr)	Labor Cost ($/hr)	Total Labor Cost ($)
Reinstatement of the prohibition on MAOs and Part D sponsors marketing outside of their service areas (unless unavoidable)	697 MA organizations	697 contracts	0.5	349	90.36	31,536
Clarification of the requirement of a plan to notify CMS of any agent that fails to adhere to CMS requirements	697 MA organizations	697 contracts	0.5	349	90.36	31,536
Agents/brokers inform beneficiaries that the beneficiaries can obtain complete Medicare information from 1-800-MEDICARE, SHIPs, or Medicare.gov	697 MA organizations	697 contracts	0.5	349	90.36	31,536
Agents/brokers ask a standardized list of questions prior to enrolling the beneficiary in a plan	697 MA organizations	697 contracts	0.5	349	90.36	31,536
Agents/brokers inform beneficiaries of the number of organizations and plans the agent/broker represents	697 MA organizations	697 contracts	0.25	174	90.36	15,723
Clarify the prohibition of the use of the term “Medicare” or	697 MA organizations					

Collection of Information Instruments and Instruction/Guidance Documents

There are no reporting instruments or instructions other than what has published in CMS-4201-F and what is codified in the CFR.

13. Capital Costs

Not applicable.

14. Annual Cost to the Federal Government

The burden associated with the expectations for MA organizations to revise their policy and procedure documents is strictly borne by those organizations.

None of the costs associated with the organization's revisions would be incurred by the Federal Government. Regardless, the following is an assessment of the costs incurred in the normal course of business operations.

CMS Central Office Staff: 1 FTE (GS-13 Step 1) working at 5% of assigned duties.

Annual Time: 104 hours (2,080 hr x 0.05)

Adjusted Hourly Wage: $116.70/hr ($58.35/hr + $58.35/hr)

Annual Cost: = $12,137 ($116.70/hr x 104 hr)

The $58.35/hr wage is derived from OPM's 2026 Salary Table for the Washington-Baltimore-Arlington locality pay area (see https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2026/DCB_h.pdf).

$116.70/hr is calculated from 100% of the hourly wage ($58.35/hr x 2) to account for fringe benefits and other indirect costs.

15. Changes to Burden

The following information collection requirements (ICRs) and burden estimates are associated with our April 6, 2026 (91 FR 17384) final rule (CMS-4212-F, RIN 0938-AV63).

ICRs Regarding Removing Rules on Time and Manner of Beneficiary Outreach (§§ 422.2264(c) and 423.2264(c))

CMS finalized three deregulatory changes to §§ 422.2264(c) and 423.2264(c) to remove rules on the time and manner of beneficiary outreach. The changes are designed to improve the plan decision making process by creating a more convenient, beneficiary-friendly outreach experience and to reduce burden on beneficiaries, plans, and agents/brokers. The deregulatory changes

concern: (1) marketing events following educational events in the same location, (2) the timing of a personal marketing appointment after Scope of Appointment (SOA) form completion, and (3) SOA forms at educational events.

a. Marketing Events Following Educational Events in Same Location

For the elimination of the requirement for a 12-hour delay between an educational and marketing event at §§ 422.2264(c)(2)(i) and 423.2264(c)(2)(i), this rule removes the one-time burden to change the MA organization's policies and procedures.

With 697 contracts and 15 minutes (0.25 hr) per response at $90.36/hr for a business operations specialist, we estimate a reduction of minus 174 hours (697 contracts x 0.25 hr) and minus $15,723 (174 hr x $90.36/hr).

b. Timing of Personal Marketing Appointment After Scope of Appointment (SOA) Form Completion

For the elimination of the 48-hour waiting period required between the SOA completion and a personal marketing appointment at§§ 422.2264(c)(3)(i) and 423.2264(c)(3)(i),this rule removes the one-time burden to change the MA organization's policies and procedures.

With 697 contracts and 15 minutes (0.25 hr) per response at $90.36/hr for a business operations specialist, we estimate a reduction of minus 174 hours (697 contracts x 0.25 hr) and minus $15,723 (174 hr x $90.36/hr).

c. Scope of Appointment (SOA) Forms at Educational Events

For the elimination of the prohibition of the collection of SOA forms at educational events at§§ 422.2264(c)(1)(ii)(D) and 423.2264(c)(1)(ii)(D), this rule removes the one-time burden to change the MA organization's policies and procedures.

With 697 contracts and 15 minutes (0.25 hr) per response at $90.36/hr for a business operations specialist, we estimate a reduction of minus 174 hours (697 contracts x 0.25 hr) and minus $15,723 (174 hr x $90.36/hr).

Summary of Changes

Removing Rules on Time and Manner of Beneficiary Outreach	Respondents	Total Responses	Time per Response (hr)	Total Time (hr)	Labor Cost ($/hr)	Total Cost ($)
Marketing Events Following Educational Events in Same Location	697 MA organizations (contracts)	697	0.25	(174)	90.36	(15,723)
Timing of Personal Marketing Appointment after Scope of Appointment (SOA) Form Completion	697 MA organizations (contracts)	697	0.25	(174)	90.36	(15,723)
Scope of Appointment (SOA) Forms at Educational Events	697 MA organizations (contracts)	697	0.25	(174)	90.36	(15,723)
TOTAL	697 MA organizations (contracts)	(2,091)	0.25	(523)	90.36	(47,169)

13. Publication/Tabulation Dates

There are no publication or tabulation dates.

14. Expiration Date

CMS does not object to displaying the expiration date.

15. Certification Statement

There are no exceptions to the certification statement.

A. Collections of Information Employing Statistical Methods

This collection does not employ statistical methods.