# Despite Recent Stay on CMSâ?? 2025 Final Rule For Medicare, One-to-One Consent Still Required

## Description

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By James Schulze

This article discusses the recent federal court proceedings that have paused some provisions of CMSâ?? Final Rule for the 2025 Medicare contract year. It also gives insights on what agents and brokers can do to legally market Medicare Advantage to seniors.

In April 2024, the Centers for Medicare & Medicaid Services (CMS) issued a Final Rule for the 2025 Medicare contract year (CMS-4205-F). The Final Rule covered a wide range of topics, from insurance agent/broker compensation to how they can legally market Medicare Advantage and Part D to eligible seniors in 2025 (see our initial blog here).

Since the File Rule was issued, many insurance agents and brokers have been modifying their marketing practices to be compliant with the one-to-one consent requirements for sharing seniorsâ?? personal data. That is, until news circulated in early July that a federal court in Texas stayed provisions of the Final Rule, leaving many to wonder how this will impact their business in the 2025 contract year beginning in October 2024.

### Focus of the lawsuits

After the Final Rule was issued, two lawsuits were filed by organizations in the insurance industry. The lawsuits primarily focused on three major changes:

1. **Compensation** â?? CMS expanded the definition of agent/broker compensation to include â??administrative payments,â?• which were previously not considered in complying with the fair market value cap on agent/broker compensation.
2. **Fixed Fee** â?? CMS made a *one-time* increase of $100 to the fair market value to adjust for â??administrative payments,â?• which are now included in compensation.
3. **Contract-terms restriction** â?? CMS stated that contracts between Medicare Advantage and Part D organizations and insurance agents/brokers and third-party marketing organizations

(TPMOs) must not directly or indirectly create an incentive that would *reasonably* inhibit an agentâ??s or brokerâ??s ability to be objective in assessing and recommending the plan that would best fit an eligible seniorâ??s healthcare needs.

The lawsuits also questioned the limits the Final Rule has placed on the distribution of Medicare beneficiariesâ?? personal data by TPMOs.

According to Sheppard Mullinâ??s â??Healthcare Law Blog,â?• the organizations who filed the lawsuits believe the Final Rule â??exceeds CMSâ?? statutory authority, is arbitrary and capricious, and was promulgated without observance of required procedures.â?•

**What the stay of the Final Rule means**

While the federal court in Texas largely sided with the organizations who filed the lawsuits, it did not issue a stay on the *entire* Final Rule.

- **Compensation, fixed fee, and contract-terms restriction have been stayed.**

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At this time, CMS will not be able to implement its desired redefinition of agent/broker compensation, fixed fee, or contract-terms restriction on October 1, 2024.

- **One-to-one consent requirements will be effective October 1, 2024.**

The court ruled in favor of CMS on data distribution restrictions, stating that under the Medicare statute, CMS may limit certain data sharing practices that could prove harmful to Medicare-eligible seniors.

At the beginning of the next Annual Enrollment Period (AEP) in October 2024, beneficiariesâ?? data that are collected by TPMOs for marketing or enrollment purposes can only be shared with another TPMO if the beneficiary gives prior written consent. TPMOs can only obtain this consent through a transparent, prominently positioned disclosure and must have a separate written consent for each TPMO that receives the data (i.e., establishing one-to-one consent between the beneficiary and each individual TPMO).

**How agents and brokers can ensure compliance with one-to-one consent**

Agents and brokers can ensure their marketing practices are fully compliant by:

- **Focusing on customer-initiated inbound calls rather than aged leads**

Customer-initiated calls will offer agents and brokers the greatest level of compliance. Eligible seniors who place an inbound call to an agent or broker give one-to-one consent to sharing their personal data for enrollment purposes. Inbound calls are most often generated using a â??click-to-callâ?• link from an ad creative posted on the Internet or social media, or by dialing a 1-800 number listed on a direct mail creative.

- **Buying sales leads that are exclusive, not resold to others**

Exclusive sales leads are leads that are not shared with more than one insurance agent or broker. The Final Rule requires TPMOs to acquire separate one-to-one consent between a senior and each agent

or broker to which their data are provided. By sticking with exclusive sales leads, you ensure compliance with this requirement.

- **Ensuring leads only come from CMS-approved creatives**

Agents and brokers should look to partner with providers who generate leads from CMS-approved creatives that clearly and accurately present information to seniors. CMSâ?? approval process is time intensive, leading some lead generation companies to take shortcuts and generate leads from noncompliant creatives and scripting. Agents and brokers can shield themselves from any noncompliance and legal action by requesting to view the creatives by which their leads are developed.

If you would like more information on how you can be compliant in 2025, give The Leads Warehouse a call at **1-800-884-8371** or visit our website at https://theleadswarehouse.com.

**For more information on the Contract Year 2025 Medicare Advantage and Part D Final Rule (CMS-4205-F), go to CMS.gov**

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