



Policy: MA.2017  
Title: **Training and Oversight of Field Marketing Organization /Broker Agency and Subcontracted Independent Agents**

Department: Network Operations  
Section: OneCare Sales & Marketing

CEO Approval: /s/ Michael Hunn 11/22/2024

Effective Date: 01/01/2023

Revised Date: 11/01/2024

Applicable to: ☐ Medi-Cal  
☒ OneCare  
☐ PACE  
☐ Administrative

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## I. PURPOSE

This policy describes the training and oversight of Field Marketing Organizations (FMO) or Broker Agencies and their subcontracted Independent Agents in compliance with the Title 42, Code of Federal Regulations (CFR) Part 417, 422 and 423, Subpart V, Centers for Medicare & Medicaid Services (CMS) Medicare Communications and Marketing Guidelines (MCMG), Department of Health Care Services (DHCS) CalAIM Dual Eligible Special Needs Plan Policy Guide and CalOptima Health Marketing policies.

## II. POLICY

- A. The FMO or Broker Agency is responsible for verifying if agent(s) have an active license including all educational requirements.
- B. CalOptima Health and the FMO or Broker Agency shall ensure that all Independent Agents complete a thorough training program prior to conducting an enrollment session.
- C. The FMO or Broker Agency will monitor Independent Agents through a variety of mechanisms on an ongoing basis to ensure continuous compliance with all State and Federal requirements as they pertain to sales and Marketing Activities. The FMO or Broker Agency should conduct monthly Marketing/Sales Event audits, coaching and feedback should be provided to their agent(s).
- D. CalOptima Health OneCare Sales and Marketing shall provide the FMO or Broker Agency, training program and testing for product/benefit, enrollment process and regulations updates. Independent Agents must complete training to be certified and ready-to-sell (RTS) and be allowed to enroll in OneCare. Training and testing must take place prior to enrolling Members into OneCare (HMO D-SNP) and renewed annually before October 1, or upon executing subcontract with the FMO.
- E. The FMO or Broker Agency shall review CFR, MCMG, DHCS D-SNP Plan Policy Guide and CalOptima Health Training and Oversight of Independent Agents to ensure Independent Agents and other marketing staff remain informed and compliant with the latest applicable marketing rules and regulations as set forth by CMS, DHCS and DHMC.

- F. The FMO or Broker Agency will ensure that Independent Agents complete CMS required annual training and testing on Medicare rules and regulations and obtain a Medicare Fraud, Waste, and Abuse Training Certification. Training and testing must take place prior to enrolling Members into OneCare and renewed annually before October 1 or upon executing subcontract with the FMO.
  - 1. The FMO or Broker Agency will retain evidence and ensure that each of their subcontracted Independent Agents have an annual America's Health Insurance Plans (AHIP) Medicare Certificate, a valid and active California Department of Insurance (DOI) license to transact Medicare enrollments, and an Error and Omissions (E&O) Certificate.
  - 2. The Independent Agent(s) from the FMO or Broker Agency will provide CalOptima Health, by uploading into the agent portal, copies of AHIP Medicare Certificate, California DOI Insurance License, and an Error & Omissions (E&O) Certificate.
- G. The FMO or Broker Agency must ensure use of OneCare marketing materials and OneCare Enrollment Kits that CalOptima Health develops and provides to FMOs or Broker Agencies.
- H. The FMO or Broker Agency must distribute OneCare Enrollment Kits and ensure that Independent Agents use them during enrollment appointments.
- I. The FMO or Broker Agency must provide interpreter services during OneCare Enrollment appointments.
- J. The FMO or Broker Agency must report Marketing/Sales Events to CalOptima Health's RAC Medicare Department twenty-one (21) days prior to an event.
- K. The FMO or Broker Agency or subcontracted Independent Agents may not use CalOptima Health name, logo or other proprietary mark in any press release, advertising, promotional, marketing, or similar publicly disseminated material without first submitting such material to CalOptima Health and obtaining written approval of the material and consent to such use.
- L. The FMO or Broker Agency shall meet with CalOptima Health OneCare Sales and Marketing monthly or more often, if required, to review all sales and marketing activities, production, rapid disenrollment, complaints, sales allegations and/or grievances, report if any subcontracted agent has lost credentials to be allowed to enroll in Medicare, and update on provider and Member outreach activities.
- M. CalOptima Health's Delegation Oversight Department shall conduct an initial readiness assessment before a contract is executed with a First Tier Down-Stream Entity (FDR) such as an FMO or Broker Agency. Thereafter, the FMOs or Broker Agencies shall complete an annual assessment, in accordance with CalOptima Health Policy GG.1619: Delegation Oversight.

### **III. PROCEDURE**

- A. FMOs or Broker Agencies shall meet with CalOptima Health's OneCare Sales and Marketing Department monthly, or more often if required, to review all sales and Marketing Activities, production, rapid disenrollment, complaints, sales allegations and/or grievances, report if any subcontracted agent has lost credentials to be allowed to enroll in Medicare, and update on provider and Member outreach activities. One Care Sales and Marketing will develop A Monthly FMO/Broker Agency Joint Operation Meeting (JOM) Agenda with standing topics related to audit and oversight and minutes will be documented with reports and/or action items.

1. Each meeting shall have an agenda, attendance, meeting minutes and reporting documentation of compliance topics such as reviewing Member grievances, sales allegations, or complaints, resolutions and/or corrective actions.
  2. The FMO or Broker Agency shall report any staff disciplinary actions or violations of any requirements that apply to the OneCare program associated with Member interaction to the CalOptima Health OneCare Sales and Marketing Department during monthly meetings.
- B. The FMO or Broker Agency shall ensure that all Independent Agents complete a comprehensive training program prior to conducting an enrollment session.
1. Upon execution of a subcontract with an FMO or Broker Agency, each Independent Agent shall participate in a training program that includes review of the following:
    - a. United States Code of Federal (CFR) Regulations, Title 42 – Public Health, Part 422 - Medicare Advantage Program, Subpart V- Medicare Advantage Communication Requirements.
    - b. CMS Medicare Manual Chapter 3 - Medicare Communication and Marketing Guidelines (MCMGs).
    - c. DHCS CalAIM Dual Eligible Special Needs Plan Policy Guide.
    - d. CMS Medicare Manual Chapter 2 - Medicare Advantage Enrollment and Disenrollment Guidance.
    - e. CMS-approved OneCare marketing materials.
    - f. CMS-approved Summary of Benefits for the OneCare Program; and
    - g. CMS-approved OneCare Evidence of Coverage/Member Handbook.
  2. The FMO or Broker Agency shall ensure that each Independent Agent completes CalOptima Health's training program and testing for product/benefit, enrollment process and regulations updates. Independent agents must complete training and testing to be certified and ready-to-sell (RTS) and be allowed to enroll in OneCare. Training and testing must take place via the agent portal prior to enrolling Members into OneCare and renewed annually before October 1<sup>st</sup> or upon executing subcontract with the FMO.
    - a. CalOptima Health's OneCare Sales and Marketing Department shall develop and upload the annual training modules and testing required to be certified/approved to enroll in OneCare to the agent portal. The Independent Agent must achieve a score of eighty-five percent (85%) or higher to certify and be approved to enroll in OneCare. Independent Agent are required to re-certify every year before October 1<sup>st</sup>.
- C. The FMO or Broker Agency shall provide additional training, as necessary, to reinforce specific marketing practices and as a result of any updates to the Code of Federal Regulations, Medicare Communications and Marketing Guidelines (MCMG), and DHCS CalAIM Dual Eligible Special Needs Plan Policy Guide. The FMO or Broker Agency shall document and retain training with agendas, sign-in sheets, and training handouts or attestations if applicable. Oversight and Monitoring of Independent Agents

1. The FMO or Broker Agency will ensure that each Independent Agent shall complete annual American Health Insurance Plan (AHIP) training and testing with a passing score or better. The FMO or Broker Agency will retain a copy of the Certificate of Completion. These credentials must be uploaded on CalOptima Health's agent portal where staff from CalOptima Health shall verify before approving or certifying an Independent Agent is allowed to enroll in OneCare.
2. The FMO or Broker Agency shall follow established audit and oversight process for each Independent Agent and report to CalOptima Health any deficiencies, corrective actions and/or termination of subcontract with specific Independent Agent.
3. The FMO or Broker Agency must have effective systems for routing monitoring, auditing, and identifying compliance risks to prevent, detect, and correct non-compliance. FMO or Broker Agency must investigate non-compliance issues immediately and correct promptly. Their internal monitoring should ensure that there will not be a recurrence of the same non-compliance and have efficient and effective internal controls.
4. CalOptima Health shall provide each FMO or Broker Agency a form to report any Independent Agents that require deactivation from the agent portal and the Independent Agent will not be allowed to enroll into OneCare.
5. The FMO or Broker Agency shall report any potential non-compliance to the Director, Manager, or Supervisor in the OneCare Sales and Marketing Department via email.
6. The FMO or Broker Agency shall report Independent Agent participation in Marketing/Sales Events a minimum of twenty-one (21) days before the event. The FMO or Broker Agency shall audit these events and report outcomes to CalOptima Health.
7. The FMO or Broker Agency and Independent Agent must follow the CMS rule regarding privacy. CMS prohibits personal beneficiary data collected by Third Party Marketing Organization (TPMOs) for marketing or enrolling a beneficiary into a Medicare Advantage or Part D plan to be shared with other TPMOs, unless prior express written consent is given by the beneficiary. This rule requires a one-to-one consent structure where TPMOs must obtain prior express written consent through a clear and conspicuous disclosure for each TPMO that will be receiving the beneficiary's data.
8. The FMO or Broker Agency will ensure that the Independent Agents shall not conduct unsolicited personal/individual appointments.
9. Independent Agents must Record all marketing, sales, and enrollment calls, including the audio portion of calls via web-based technology, in their entirety, in accordance with CMS regulations. Recorded calls must be available, and downloadable for random audits from CalOptima Health or regulators. The FMO or Broker Agency must abide by the Medicare Record retention requirements of ten (10) years plus current year.
10. As necessary, the FMO or Broker Agency shall monitor recorded sales and marketing calls to ensure compliance with CFR, MCMG, and the DHCS CalAIM DSNP Plan Policy Guide.
11. The FMO or Broker Agency shall ensure that Independent Agents complete a Scope of Appointment (SOA) Form for all one-on-one appointments, regardless of the venue (e.g., home or telephone). An SOA must be documented for all Marketing Activities, in-person, telephonically, including walk-ins. Independent Agents shall complete the SOA at least forty-eight (48) hours prior to the personal enrollment appointment with the prospective Member, except in two (2) situations:

- a. The first exception is for Members who are approaching the end of a valid enrollment period. This could be the end of the Annual Election Period (AEP), the Medicare Advantage Open Enrollment Period (MA OEP), and Special Election (SEP) or the Initial Coverage Election Period (ICEP). For these Members, the forty-eight (48) hour rule will not apply if the SOA is completed during the last four (4) days of the election period.
  - b. The other exception shall be for walk-ins.
- 12. Independent Agent(s) shall capture a prospective Member's signature on an SOA hard copy form for walk-ins or via a telephonic recording. The SOA must be retained by the FMO or Broker Agency and documented into CalOptima Health's agent portal along with the enrollment application with an explanation of how the SOA was captured, date, and location.
- 13. The scope of what may be sold at the individual sales presentation is reflected in the SOA form or via telephonic recording in FMO or Broker Agency system.
- 14. If the Independent Agent(s) would like to discuss additional products during the appointment in which the Member indicated interest, but did not agree to discuss in advance, the Independent Agent(s) must document a second scope of appointment for the additional product type to continue the Marketing appointment.
- 15. The FMO or Broker Agency will ensure that Independent Agents use the CMS approved enrollment kit that includes:
  - a. OneCare Scope of Appointment (SOA);
  - b. Third-Party Marketing Organization (TPMO) Disclaimer;
  - c. OneCare Pre-Enrollment Check List (PECL);
  - d. Important Things to Know;
  - e. 2025 OneCare Benefit Highlights
  - f. How to Enroll
  - g. OneCare Enrollment Form;
  - h. Attestation of Eligibility for an Enrollment Period;
  - i. What to Expect After Enrollment;
  - j. Notice of Availability and Notice (NA) of Nondiscrimination (NOND);
  - k. Important Phone Numbers; and
  - l. OneCare Star Rating Letter.
- 16. The FMO or Broker Agency as a downstream entity must ensure that the subcontracted Independent Agents convey:

- a. The “Third-Party Marketing Organization (TPMO) Disclaimer” within the first minute of a recorded sales call and/or enrollment appointment. This must also be prominently displayed on TPMO websites, and included in marketing materials such as the OneCare Enrollment Kit, print and TV ads, as follows:

“We do not offer every plan available in your area (Orange County, California). Currently we represent <insert number of organizations> organizations which offer <insert number of plans> products in your area. Please contact Medicare.gov, 1-800-MEDICARE, or your local State Health Insurance Assistance Program (SHIP) to get information on all of your options. Your Local SHIP is Orange County Health Counseling and Advocacy Program (HICAP) and can be reached at 1-800-434-0222 or 1-714-479-0107 (TTY 711) for help with plan choices.”

17. The FMO or Broker Agency will ensure that Independent Agents go over the CMS developed list of topics. Independent Agents should ask Members for the names of their primary care providers, specialists, prescription drug coverage and costs, cost of health care services, premiums, benefits, and specific healthcare needs prior to enrollment. Independent Agents should also educate the Members of the cancellation process and how to file a complaint with CMS.
18. The FMO or Broker Agency shall ensure quality control measures for each OneCare enrollment submitted by Independent Agents to ensure content, dates, and signatures meet CMS requirements. FMO or Broker Agency must abide by Medicare Record retention requirements of ten (10) years plus current year.
19. CalOptima Health Enrollment and Reconciliation Department staff shall validate each enrollment for elements such as election period, and Member information before submitting to CMS.
20. CalOptima Health OneCare Sales and Marketing shall review enrollment packets to ensure compliance with the enrollment form content including the SOA and timeframes. On a monthly basis, three (3) enrollment packets are randomly selected per FMO for review.
21. The FMO or Broker Agency shall review and investigate any grievances filed against Independent Agents.
22. The FMO or Broker Agency will investigate and respond to CalOptima Health staff regarding a Member’s complaint, sales allegation and/or grievance against Independent Agent(s) within the required timeframe, addressing Member’s allegations and indicating any action taken to prevent future occurrences, if appropriate.
23. CalOptima Health’s Delegation Oversight Department shall conduct an initial readiness assessment and annual assessments for First Tier Down-Stream Entity (FDR) of FMOs or Broker Agencies, in accordance with CalOptima Health Policy GG.1619: Delegation Oversight.

#### **IV. ATTACHMENT(S)**

- A. Template of Monthly FMO/Broker Agency Joint Operation Meeting (JOM) Agenda
- B. FMO Monthly Audit and Oversight Reporting
- C. 2025 OneCare Enrollment Kit

**V. REFERENCE(S)**

- A. CalOptima Health Contract with the Centers for Medicare & Medicaid Services (CMS) for Medicare Advantage
- B. CalOptima Health Policy MA.2001: Marketing Material Standards
- C. CalOptima Health Policy MA.2002: Marketing Activity Standards
- D. CalOptima Health Policy GG.1619: Delegation Oversight
- E. Contract Year CY 2025 Agent and Broker Compensation Rates, Submissions, and Training and Testing Requirements (Reissued on 07/18/2024).
- F. Department of Health Care Services (DHCS) CalAIM Dual Eligible Special Needs Plan Policy Guide (Issued July 2024).
- G. Medicare Managed Care Manual, Chapter 2, Medicare Advantage Enrollment and Disenrollment, (Issued 08/08/2024).
- H. Medicare Managed Care Manual, Chapter 3, Medicare Communications and Marketing Guidelines (MCMG) (CMS memorandum updates to contract year (CY) 2019 MCMG), Issued 02/09/2022.
- I. Title 42, Code of Federal Regulations (C.F.R.), Parts 422 Subpart V, 423 and 417, Amended (Issued 06/03/2024).

**VI. REGULATORY AGENCY APPROVAL(S)**

None to Date

**VI. BOARD ACTION(S)**

Date	Meeting
04/06/2023	Regular Meeting of the CalOptima Health Board of Directors

**VII. REVISION HISTORY**

Action	Date	Policy	Policy Title	Program(s)
Effective	01/01/2023	MA.2017	Training and Oversight of Field Marketing Organization/Broker Agency and Subcontracted Independent Agents	OneCare
Revised	11/01/2023	MA.2017	Training and Oversight of Field Marketing Organization/Broker Agency and Subcontracted Independent Agents	OneCare
Revised	11/01/2024	MA.2017	Training and Oversight of Field Marketing Organization/Broker Agency and Subcontracted Independent Agents	OneCare

## VIII. GLOSSARY

<b>Term</b>	<b>Definition</b>
Abuse	A Provider practice that is inconsistent with sound fiscal, business, or medical practice, and results in an unnecessary cost to CalOptima Health and the OneCare program, or in reimbursement for services that are not Medically Necessary or that fail to meet professionally recognized standards for health care. It also includes Member practices that result in unnecessary cost to CalOptima Health and the OneCare program.
Communications	For purposes of this policy, communications mean activities and use of materials created or administered by the Medicare Advantage (MA) organization or any downstream entity to provide information to current and prospective enrollees.
Field Marketing Organization (FMO)	A Field Marketing Organization (FMO) is the same as an independent marketing organization (IMO). FMOs are typically top-level organizations that are licensed to sell health insurance products. It is a company that works with agents, agencies, and brokerages. It supports independent insurance agents in their sales endeavors and client retention. FMOs provide an extra level of support to agents through customer service, marketing and state-of-the art resources and tools. Agents subcontract with FMOs to sell health insurance products.
Fraud	An intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable Federal or State law, in accordance with Title 42 Code of Federal Regulations section 455.2, Welfare and Institutions Code section 14043.1(i).
Independent Agent	An independent agent is an insurance agent who is not employed by any specific insurer and sells issuance policies from multiple companies. They are self-employed and subcontracted by an FMO or Broker Agency. This agent performs education, Marketing, and enrollment tasks for OneCare program and shall possess California Department of Insurance (DOI) licensure, required to be renewed every two (2) years.
Marketing	Activities and use of materials that are conducted by CalOptima Health with the intent to draw a beneficiary's attention to CalOptima Health and to influence a beneficiary's decision- making process when selecting a plan for enrollment or deciding to stay enrolled in a plan (that is, retention-based marketing). Additionally, marketing contains information about CalOptima Health's benefit structure, cost sharing, measuring, or ranking standards.
Medical Record	A medical record, health record, or medical chart in general is a systematic documentation of a single individual's medical history and care over time. The term 'Medical Record' is used both for the physical folder for each individual patient and for the body of information which comprises the total of each patient's health history. Medical records are intensely personal documents and there are many ethical and legal issues surrounding them such as the degree of third-party access and appropriate storage and disposal.
Medicare Insurance Broker or Agent	A Medicare insurance broker is typically an independent insurance agent who is licensed to sell Medicare plans on behalf of multiple insurance companies.



<b>Term</b>	<b>Definition</b>
Marketing Activity	Any product or activity intended to encourage retention of or an increase in Contracted Membership or any occasion during which Marketing Materials are presented to Members or persons who may become Members through verbal exchanges or the distribution of Marketing Materials. Marketing Activities may include but are not limited to health fairs, workshops on health promotion, after school programs, raffles, informational sessions hosted by Providers, community-based social gatherings, and posting of Marketing Materials on the internet.
Marketing/Sales Event	Marketing/Sales Events are events designed to steer, or attempt to steer, enrollees or potential enrollees toward a plan or a limited set of plans. At Marketing/Sales Events, the Plan/Part D Sponsor may promote specific benefits/premiums and/or services offered by the plan. Plans/Part D Sponsors may conduct a formal event where a presentation is provided to Medicare beneficiaries or an informal event where Plans/Part D Sponsors are only distributing health plan brochures and pre-enrollment materials. Plans/Part D Sponsors may also accept enrollment forms and perform enrollment at Marketing/Sales Event.
Member	A beneficiary enrolled in a CalOptima Health OneCare program.
Talking Points	Talking Points are standardized text. Informational Talking Points are designed to respond to beneficiary questions and requests and provide objective information about a plan or the Medicare program. Sales and enrollment Talking Points are intended to steer a beneficiary towards a plan or limited number of plans, or to enroll a beneficiary into a plan.
Third Party Marketing Organization (TPMO)	Means organizations and individuals, including independent agents and brokers, who are compensated to perform lead generation, marketing, sales, and enrollment related functions as a part of the chain of enrollment (the steps taken by a beneficiary from becoming aware of CalOptima Health or plans to making an enrollment decision). TPMOs may be a first tier, downstream or related entity (FDRs), as defined under 42 CFR § 422.2, but may also be entities that are not FDRs but provide services to CalOptima Health or a CalOptima Health FDR.
Waste	The overutilization of services, or other practices that, directly or indirectly, result in unnecessary costs to a CalOptima Health Program. Waste is generally not considered to be caused by criminally negligent actions but rather the misuse of resources.