Department: Compliance	**Effective Date:** 02/14/2014
Unit: Special Investigations	**Most Recent Revision Date:** 12/20/2017
Policy and Procedure Title: Sales Allegations Investigation Process for Independent Agents	**Applies to:** ☑ MCS Advantage, Inc.
Approved by: Corporate Compliance Committee	

PURPOSE

To ensure that MCS Advantage Inc. (MCS) Independent Agents comply with all CMS and MCS policies and procedures related to sales and marketing practices.

PROCEDURES

Phase I (Intake/Classification Process)

A. Marketing and sales incidents, also referred to as "marketing allegations", may be received by the Enrollment Department, Appeals & Grievances Unit, Tele-Marketing Unit, Call Centers, or any other MCS employee or contractor, as a complaint filed directly with the plan or through 1-800-MEDICARE for review by the Quality Department.
B. Timeframes set forth in this procedure serve as guidance for handling investigations however; non-compliance with these timeframes does not invalidate the complainants' allegation, the investigation process, or the determination.
C. Sales allegations are sent to the Special Investigations Unit via the following means:
    1. Designated email addresses marketing.incidents@medicalcardsystem.com and/or mcscompliance@medicalcardsystem.com;
    2. Mail;
    3. Fax;
    4. Telephone; and
    5. In person.
D. The Special Investigations Specialist retrieves sales allegations from the designated email address marketing.incidents@medicalcardsystem.com. Sales allegations received through mcscompliance@medicalcardsystem.com are retrieved by Regulatory and Operational Compliance Unit and routed to the Special Investigations AVP through Compliance 360. The Special Investigations AVP forwards these allegations, and those received through alternate means (mail, fax, telephone, in person, etc.) to the Special Investigations Specialists. The allegations are handled and documented no later than two (2) weeks upon receipt at MCS.
    1. The marketing incidents referrals that are dismissed are registered in the database and flagged as dismissals.
        a. The dismissed marketing allegation referrals related to benefits allegations, lack of information/documentation and authorized representatives who no longer have contractual relationships with the company may be used as reference in other investigations.
    2. Within five (5) calendar days of receipt of the incident, the Special Investigations Specialist reviews the marketing allegations to determine the type of complaint/issue. Any complaint/issue not related to marketing/sales conduct will be categorized as dismissed and returned to the department that routed the issue for

appropriate follow up and/or routed to another area that can handle it (e.g. Customer Service, Telemarketing).

3. The Special Investigations AVP or Specialist may also categorize a case as "dismissed" for the following reasons:
   a. Member did not confirm the complaint, or did not intend to present a complaint;
   b. The issue was misunderstood by the originator of the allegation (person who submitted the referral);
   c. After evaluating the referral it is determined that it does not include a possible marketing violation;
   d. If the Independent Agent does not have a contract with MCS (at the date of the referral) and no sufficient evidence is identified based on the documentation and/or information available in MCS to sustain the allegation;
   e. There is not enough evidence to proceed with the investigation such as:
      i. Insufficient documentation to uphold the allegation;
      ii. Insufficient documentation related to the beneficiary; and/or
      iii. The beneficiary's allegation is unclear, incomplete or not well documented;
      iv. The Sales Agent's name is not presented.
   f. The allegation is related to a potential signature forgery or identity theft. These referrals are handled as a potential fraud, waste, or abuse (FWA) case, registered into the FWA Investigations log and are handled pursuant to procedure number CA-FWA-004 *Investigation Management Process of Suspected Fraud, Waste and Abuse/Integrity Program*.
   g. Others.
4. All dismissals, regardless of the reasons for its dismissal, are evaluated to identify whether the access to services was affected and if the beneficiary received proper orientation with regards to his/her allegation, among other possible scenarios. The management of dismissals does not end until the necessary interventions with the beneficiary have been properly documented.
5. On a monthly basis the Special Investigations Unit AVP and/or his/her designee evaluates the dismissals under the "Other" category.

E. If the complaint is related to the sales and marketing process, it will be categorized as a "sales allegation" and assigned to the Special Investigations Unit for processing.
   1. Sales allegations that are incomplete (e.g. unable to determine the issue due to poor documentation) will be returned to the originating department for clarification/additional information. The complaint/issue will be categorized as "dismissed" until clarification/additional information is obtained.
   2. During Phase I, the Special Investigations Specialist identifies whether the access to services or the beneficiary's enrollment were or will be affected. These cases are categorized as "urgent" and handled according to the beneficiary's necessities.

F. The Special Investigations Specialist evaluates all documentation related to the sales allegation and all information related to the sales process, as applicable, pursuant to MCS policies and procedures. If any issue of non-compliance is identified during the evaluation of the sales allegation and/or sales process not directly related to the sales allegation, the Special Investigations Unit will consider it as an incidental finding and categorize the incidental finding according to the marketing allegations categories detailed in this Procedure.

G. Under no circumstance will the company tolerate that any individual, without distinction of the position, formulates false or malicious grievances or complaints, and/or maliciously fabricates or modifies information or documentation of any kind. In case that the results of an investigation show that any individual filed the complaint: knowingly and/or

intentionally without fundamentals or based on false or manipulated information; given false testimony; created false documentation; modified or destroyed documentation or evidence of any kind; intervened in any investigative process without the prior and express consent of an authorized representative of the Special Investigations Unit; and/or has interfered somehow in any investigative process, disciplinary corrective measures may be applied upon him/her, indistinctively of his/her rank, title or hierarchy level.

1. It can be considered interference any unauthorized communication about the case under investigation with the individual who presented the referral or is being affected by the situation, with any witnesses and/or any individuals involved in the case.

H. The Special Investigations Specialists maintains the confidentiality of the marketing investigations and share the minimum necessary information only with the parties involved in the investigation process. General information pertaining to the marketing investigations, the one that does not contain elements that may identify the involved parties, may be shared in trainings and meetings for educational purposes.

I. There is no conflict of interest between the parties involved and the Special Investigations Specialist who is conducting the investigation, which may intervene or affect the results of the investigation. The Special Investigations Specialist certifies this information prior to issuing a determination for each marketing investigation.

Phase II (Investigation)

A. Within fifteen (15) calendar days from receipt of the marketing allegation, the Special Investigations Specialist completes the following actions:
   1. Reviews the documentation in the marketing allegation file;
   2. Listens to the available call(s) recording(s);
   3. Obtains an interview with the beneficiary; and
   4. Coordinates and conducts an interview to the Independent Agent as well as records the statements presented during the interview(s);

B. The electronic file of the marketing allegation includes the following information (as applicable):
   1. Sales Incident Formulary (See Attachment 1);
   2. Copy(ies) of the Eligibility Screen(s);
   3. Scope of Appointment;
   4. Durable Medical Equipment Formulary;
   5. Copy of the Enrollment Form and any other documentation pertaining to the enrollment (e.g. previous Enrollment Forms); and
   6. Additional documents related to the investigation.

C. MCS' call recordings related to the complaint are obtained through personnel from the Telemarketing and Customer Service Departments, if it was not provided along with the complaint. If the recordings are not available, the Special Investigations Specialist determines whether it is necessary to contact the beneficiary in order to obtain his/her statement.
   1. If the beneficiary is not enrolled in the plan, the Special Investigations Specialist will use the script previously approved by the Compliance Department to contact the beneficiary. Such call is recorded and stored as per the document retention policy.

D. The Special Investigations Specialist may also access or request the calls registry of the Sales Agent to verify the inbound and outbound calls from or to the beneficiary.

Phase III (Final Result and Determination)

A. Within fifteen (15) calendar days of the completion of Phase II, the Special Investigations Specialist will submit a final report to the Special Investigations AVP for review and determination of "founded" or "not founded".
B. Determinations of the marketing allegations are categorized as follows:
    1. Founded Level 1 – The MCS' Independent Agent committed a crass violation to CMS and/or MCS guidelines;
    2. Founded Level 2 – The MCS' Independent Agent;
    3. Founded Level 3 – The MCS' Independent Agent committed a minor infraction;
    4. Not Founded – The MCS' Independent Agent did not commit a fault; and
    5. Dismissed – The beneficiary retired the complaint, it was not his/her intention to file a complaint, or the situation arose as a misunderstanding from the person who originated the allegation as described in Phase I (typically occurs during Phase I of the process).
C. Marketing Allegations Categories
    1. Level 1: The MCS' Independent Agent committed a crass violation to CMS and/or MCS guidelines; or committed an infraction with the purpose of lying or receiving a benefit in exchange. This may include, but is not limited to:
        a. Retention of beneficiary's documents without his/her consent (e.g. Medicare card, MA-10, etc.);
        b. Door-to-door Solicitation;
        c. Misrepresentation of Medicare/Social Security Agent;
        d. Knowingly enrolling non-eligible persons, including persons with ESRD;
        e. Knowingly enrolling a mentally disabled beneficiary;
        f. Holding applications (that impacts the members desired effective date);
        g. Offering gifts or inducements to enroll;
        h. Using providers or provider groups to distribute information comparing benefits or different health plans;
        i. Accepting plan applications in provider offices or facilities where health care is delivered (other than plan approved locations in accordance with the MMG, *i.e*. common areas, cafeterias, etc.);
        j. Offering false information during the investigation process, being negligent in the management of the investigation information, or obstructing or not cooperating with the investigation process;
        k. Failure to forward a request for withdrawal or disenrollment request (referring these requests to the MCS Call Center is acceptable);
        l. Use of marketing materials not previously approved by MCS or the applicable regulatory agency;
        m. Incorrect enrollment (witness/translator/power of attorney);
        n. Enrollment without the beneficiary's consent;
        o. Misrepresentation of the plan (e.g. benefits, providers' network, copayments, enrollment process, effective date) with the purpose of misleading the beneficiary.
        p. Having received, in a 12-months period, three (3) or more referrals of marketing incidents related to the same allegation and a Level 3 and Level 2 was assigned for this situation during the past 12-months period and the pattern related to the same allegation continued after received the Level 3 and Level 2.
    2. Level 2: The MCS' Independent Agent committed a significant violation, including, but not limited to:

a. Holding applications (beyond internal timeframes; does not impact the members desired effective date);
b. Not establishing the scope of the appointment appropriately before the sales appointment;
c. Using incorrect (obsolete) marketing materials;
d. Using the option of cancelling the enrollment as a way to close a sale;
e. Comparing one insurance agency to another;
f. Not following proper enrollment procedures;
g. Not following internal sales procedures and standards; and
h. Offering incorrect information to the beneficiary about the plan in a way in which it impacts the beneficiary's coverage (e.g. encouraging the exception of services or medications).
i. Having received, in a 12-months period, three (3) or more referrals of marketing incidents related to the same allegation and a Level 3 was assigned for this situation during the past 12-months period and the pattern related to the same allegation continued after received the Level 3.

3. Level 3: The MCS' Independent Agent committed a minor violation or provided incorrect information about MCS' benefits, services or coinsurances including, but not limited to:
   a. His/her presentation was not clear or incomplete and may have caused confusion;
   b. Failed to present the plan or the product correctly;
   c. Failed to present the enrollment and disenrollment periods correctly;
   d. Failed to present the plan benefits or premium correctly (incorrect coinsurance or explanation of benefits/services);
   e. Failed to present the physicians network correctly (provider terminations, availability of network, provider groups);
   f. Failed to complete or incorrectly completed the internal sales documents (e.g. "in-home" report); and
   g. Having received, in a 12-months period, three (3) or more referrals of marketing incidents related to the same allegation.

Corrective Action

A. The Independent Agent, as per contract, has 10 points related to marketing investigations. The purpose of the points system is that the Independent Agent knows the seriousness of the committed violation. The system is ruled as follows:
   a. If a Level 1 determination is given, four (4) points are deducted (retraining is optional) and a chargeback from the sales commission or sales related to the investigation is performed.
   b. If a Level 2 determination is given two (2) points are deducted and a retraining is given.
   c. If a Level 3 determination is given one (1) point is deducted and a retraining is given.
   d. If a founded determination of any level (1, 2 or 3) is given related to a violation for which the authorized representative has already been trained or for which he/she already received a corrective action, applying a higher level will be considered.
   e. The Compliance Department may recommend applying a higher level if a marketing violations pattern is identified.
   f. If an unfounded determination is given, no points are deducted.

Below is a sample table for reference

Determination Date	**Determination Result**	**Points (Starting with 9 pts)**
February 2016	Unfounded	10 pts
March 2016	Level 2	8 remaining pts and retraining
May 2016	Level 1	4 remaining pts and chargeback (optional retraining)
December 2016	Level 1	4 points and termination of contract

B. The points system is measured from the 12 natural months prior to the date of referral for investigation until the date of such referral. For example, if the referral was received in February 2016, the evaluation of the authorized representative's file will be performed from February 2015.
C. The Compliance Department sends to the Membership Department, as requested, the list of the marketing investigations, referrals and dismissals for new candidates prior to contracting. The Membership Department awaits the final determination of the investigations in progress in order to contract an authorized representative.
D. Other considerations for the cases and the corrective actions include:
    a. Seriousness of the offense;
    b. Circumstances related to the particular case;
    c. Trainings completed by the Independent Agent;
    d. Orientation and instructions provided to the Independent Agent; and
    e. Other corrective actions present in the Independent Agent's file.

Discussion of Findings Declaration Formulary

1. The Special Investigations Specialist sends the Findings Declaration Formulary to the Director and/or Manager of the Independent Agent.
2. The Sales Manager or Director of Independent Agents discusses the Findings Declaration Formulary with the Independent Agent on or before five (5) business days upon receiving the report from the Special Investigations Specialist.
3. A signed copy is sent through email to the Special Investigations Specialist immediately after it was discussed and signed by both parties. The original copy is included in the Independent Agent's file.

Development of Reports

A. On a monthly basis (no later than the 20th of each month), the Compliance Department submits to the attention of the Membership Department Management and to the Chief Executive Officer a report. Such report contains, at a minimum, the number of referrals received during the previous month, from where they were received, the number of referrals received related to Independent Agents and the nature of the allegations of those referrals.
B. The Compliance Department conducts monthly and/or ad hoc meetings with the Membership Department Senior Management to discuss marketing trends and/or any risk identified during the investigation process.

Definitions

- CMS (Centers for Medicare and Medicaid Services): The federal agency that regulates and monitors the benefits provided to the Medicare and Medicaid populations.
- ESRD (End-Stage Renal Disease): The stage of kidney impairment that appears irreversible and permanent and requires a regular course of dialysis or kidney transplantation to maintain life.
- Founded: A sales allegation determination and category when the sales agent is held responsible for the allegation.
- Initial Coverage Election Period (ICEP): A period when individuals newly eligible for Medicare may make an initial enrollment request to enroll in an MA plan.
- Marketing Incident: Any complaint in which there is an alleged violation of marketing guidelines and/or internal standards (also referred to as a "sales allegation").
- OEV: Outbound Enrollment and Verification Calls to all new enrollees.
- Prospect: A Medicare beneficiary who contacts the Sales Agent to request a sales orientation.
- Special Election Period (SEP): Time periods outside the ICEP, AEP, or Medicare Advantage Disenrollment Period (MADP) when a Medicare beneficiary may elect a plan or change his or her current plan election.
- Unfounded: A sales allegation determination and category when the Sales Agent is not at fault.

REFERENCES

- Medicare Managed Care Manual, Chapter 2 – Medicare Advantage Enrollment and Disenrollment
  - Section 40.2.1 - Who May Complete an Enrollment or Disenrollment Request
- Medicare Marketing Guidelines
- MCS Independent Agent Training Manual
- 42 CFR § 422.2268
- Membership Policies and Procedures
- Marketing Materials for the current year – Approved by Compliance Department
- MCS Code of Conduct and Compliance Program

Related Policy and/or Procedure

- MCS-Policy-007 Prompt Response to Compliance Issues
- MCS-Policy-010 – Document Retention and Access to Records by Federal and Commonwealth Regulatory Authorities

Attachments

- Attachment 1 – Marketing Incident Form

Policy and Procedure Reviews

DATE	CHANGE(S)	REASONS
12/20/2017	Clarify roles, include new provisions specify actions to be implemented when a pattern is identified for the same allegation and a Level 3 was already assigned to the employee. Eliminate request of documenting the 48 hours waiting period when a	Annual Review

	SOA is completed based on new Marketing Guidelines.	
08/17/2016	Include MCS Healthcare Holdings, LLC. Make applicable changes based on the transfer of the Marketing Incident Unit to the Compliance Department. Make some changes to the investigations time frames and other changes. Clarify names of applicable policies related to this procedure and clarify wording in some instances.	Annual review
08/13/2015	No changes	Review of changes contained in chapters 2 and 3 CY 2016 of the Medicare Managed Care Manual
02/13/2015	Language related to the documentation of investigations within two weeks from receipt was included. Change of corrective action's management.	Audit and final review
03/19/2014	Information was included	Ad hoc review
02/14/2014	Create policy and procedure	To comply with policy CA-COMP-001.