

# 2022 CMS Marketing Guidelines

Physicians DataTrust, and all contracted IPAs, comply with CMS requirements. The training herein is an overview of CMS guidelines.

# Introduction

## CMS Compliance Concerns and Limitations

- CMS has expressed concern with providers participating in marketing activities because:
  - Providers may not be aware of all plan benefits and costs.
  - It may confuse beneficiaries if they perceive providers as acting as an agent or plan representative.
  - Providers may face conflicting incentives when acting on a Plan Sponsor's behalf.
- The guidance set forth in this document is subject to change as policy, communications technology, and industry marketing practices evolve. Any new rulemaking or interpretive guidance (e.g., annual Call Letter guidance or Health Plan Management System (HPMS) memoranda) may supersede the guidance provided in this document.

# Definitions

## Communications

Activities and materials to provide information to current and prospective enrollees, including their caregivers and other decision makers.

## Marketing

A subset of communications. Includes activities and materials with the intent to draw a beneficiary's attention to a plan or plans 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 the plan's benefit structure, cost sharing, measuring, or ranking standards.



# Factors for Activity and Material Determination

- **Intent** – the purpose of marketing activities and materials is to draw a prospective or current enrollee’s attention to a plan or group of plans to influence a beneficiary’s decision when selecting and enrolling in a plan or deciding to stay in a plan (retention-based marketing).
- **Content** – based on the exclusions in the definition of marketing and marketing materials and the type of information that would be intended to draw attention to a plan or influence a beneficiary’s enrollment decision, marketing activities and materials include:
  - Information about benefits or benefit structure;
  - Information about premiums and cost sharing;
  - Comparisons to other Plan(s)/Part D sponsor(s);
  - Rankings or measurements in reference to other Plan(s)/Part D sponsor(s); or
  - Information about Star Ratings.

# Definition Examples

*A flyer reads “Swell Health is now offering Medicare Advantage coverage in Nowhere County. Call us at 1-800-SWELL-ME for more information.”*

## **Marketing or Communication?**

Communication. While the intent is to draw a beneficiary’s attention to Swell Health, the information provided does not contain any marketing content.

*A billboard reads “Swell Health Offers \$0 Premium Plans in Nowhere County”*

## **Marketing or Communication?**

Marketing. The advertisement includes both the intent to draw the viewer’s attention to the plan and has content that mentions zero-dollar premiums being available.



# Provider-Initiated Activities

## Providers may:

- distribute unaltered, printed materials created by CMS, such as reports from Medicare
- provide names of Carriers w/which they contract and/or participate
- answer/discuss merits of a plan(s), including cost sharing & benefits info; discussions may occur in areas where care is delivered
- refer patients to other sources of info, such as State Health Insurance Assistance Program (SHIP) reps, plan marketing rep, their State Medicaid Office, Social Security Office, CMS' website at <http://www.medicare.gov> or 1-800-MEDICARE
- refer patients to plan marketing materials available in common areas
- provide info & assistance in applying for LIS



# Provider-Initiated Activities

## Providers may not:

- accept/collect Scope of Appointment forms
- accept Medicare enrollment applications
- make phone calls, direct, urge, or attempt to persuade beneficiaries to enroll in specific plan based on financial or interests of provider
- mail marketing materials on behalf of Carrier
- offer anything of value to induce selection of them as a provider
- offer inducements to persuade their patients to enroll in a particular plan
- conduct health screening or genetic testing as a marketing activity
- accept compensation from Carrier for marketing/enrollment actions
- distribute marketing materials/applications in areas where care is delivered

# Plan-Initiated Activities

Providers may:

- make available, distribute/display communication materials (**NOT** marketing materials), including areas where care is delivered
- provide/make available Carrier marketing materials & enrollment forms *outside of areas where care is delivered* (common areas)

**COMMON AREAS** of healthcare setting include:

- common entryways, vestibules, waiting rooms
- hospital or nursing home cafeterias
- community, recreational or conference rooms
- pharmacy counter area





# Plan-Initiated Activities

## Providers may not:

- conduct sales activities, including sales presentations, distribute/accept enrollment applications, solicit Medicare beneficiaries in healthcare settings, except in common areas

## **RESTRICTED AREAS** generally include, but are not limited to:

- exam rooms and hospital patient rooms
- treatment areas where patients interact with provider or clinical team & receive treatment (including dialysis treatment facilities)
- pharmacy counter areas (where patients interact with pharmacy providers/obtain medications)

# Educational Events

Enrollee/Member-only Educational Events (must be a current member of the same Carrier plan that you are planning to educate them on)

- **MAY** discuss plan-specific premiums and/or benefits & distribute plan-specific materials to enrollees
- **MUST** be advertised as educational
- In this context only (i.e., events for existing enrollees/members only), discussion of benefits is not considered a sales activity; any marketing of these events must be done in a way that reasonably targets only existing enrollees (i.e., direct mail, outbound call campaign) & not the mass marketplace, i.e., radio or newspaper ad
- When enrollee/member-only educational events are held, **DO NOT** conduct enrollment or sales activities (enrollment forms are not permitted)



# Health Fairs/Senior Expos

- Educational only when advertised as educational & comply w/ CMS' requirements for educational events; otherwise, CMS views them as marketing/sales events and MUST be recorded w/Carrier as such
- **DO NOT** conduct health screening or genetic testing
- **DO NOT** conduct any sales activities such as the distribution of marketing materials or distribution or collection of plan applications
- **DO NOT** distribute plan-specific information (i.e., premiums, copayments)

# Open Enrollment Period (OEP)

## During Open Enrollment Period (OEP) – Jan. 1 to Mar. 31

OEP allows individuals enrolled in an MA plan, including newly MA-eligibles, to make a one-time election to switch to another MA plan (with or without Part D coverage) or return to Original Medicare (with or without Part D coverage)

- **MAY** at beneficiary's proactive request, send marketing materials, have one-on-one meetings, and provide information on the OEP
- **MAY** market to age-ins who have not yet made an enrollment decision
- **MAY** market to dual-eligible & LIS beneficiaries who, in general, may make changes once per calendar quarter during the first nine months of the year



# Open Enrollment Period (OEP)

- **DO NOT** knowingly target beneficiaries who are in the OEP because they made a choice during Annual Enrollment Period (AEP); includes purchasing mailing lists or other means of identification
- **MAY NOT** send unsolicited materials advertising opportunity/ability to make additional enrollment change or reference the OEP
- **MAY NOT** call or contact former enrollees who have selected a new plan during AEP
- **MAY NOT** engage or promote agent/broker activities w/intent to target the OEP as an opportunity to make further sales

# Prohibited Terminology/Statements

- CMS **PROHIBITS** distribution of marketing materials that are materially inaccurate, misleading, or otherwise make material misrepresentations or could confuse beneficiaries
- **DO** use term “**Medicare-approved**” to describe benefits & services within marketing materials
- **DO NOT** make offensive/insulting statements
- **DO NOT** state enrollees **will not** be disenrolled due to failure to pay premiums
- **DO NOT** use term “free” to describe zero-dollar premium, reduction in premiums (including Part B buy-down), reduction in deductibles or cost sharing, low-income subsidy (LIS), cost sharing for those with dual eligibility
- **DO NOT** provide inaccurate or misleading information, or engage in activities that could mislead or confuse beneficiaries

# Nominal Gifts

Nominal Gifts, any items offered to attendees of promotional activities, may:

- Be offered to beneficiaries for marketing purposes as long as gifts are of nominal value (\$15 or less based on fair market, with a maximum of \$75 aggregate, per person, per year)
- Be offered to all people regardless of enrollment and without discrimination.
- Not be items considered to be a health benefit, covered item or service.
- If nominal gift is one large gift (i.e., concert, raffle, drawing), total fair market value must NOT exceed nominal per person value based on attendance (\$15 per person); for planning purposes, anticipated attendance may be used, but based on venue size, response rate, or advertisement circulation.
  - Example: For 10 attendees, the gift may not be worth more than \$150.

# Nominal Gifts

Nominal Gifts, any items offered to attendees of promotional activities, may not:

- Be over \$15 *based on the retail purchase price of* an item
- Be in the form of **cash or other monetary rebates**, including gift cards or certificates that can be readily converted to cash, even if it is worth \$15 or less.
- Be in the form of a meal, unless the event meets the CMS definition of an educational event and complies with the nominal gift value.





# Rewards & Incentives

## Rewards & Incentives:

- **MAY** include information about Reward & Incentive Programs in marketing materials for potential enrollees. Marketing of rewards and incentive programs must be provided to all potential enrollees without discrimination.

## Rewards & Incentives may not:

- **Be used in exchange for enrollment**
- Part D plans are NOT permitted to develop or use Rewards & Incentives Plans; Part D plans MAY NOT market reward & incentive plans

# Marketing Unsolicited Contacts

**CMS has strict guidelines around contacting Medicare beneficiaries.** Unless an individual has agreed to receive communications, providers may not initiate direct contact with non-patients for marketing purposes in the following forms:

- Telephonic outreaching including voice and text messaging.
- Electronic solicitation/electronic messaging via direct messaging on social media platforms.
- Approaching beneficiaries in common areas (e.g., parking lots, hallways, lobbies, etc. )
- Door-to-door solicitation including leaving flyers at residences or cars.

Marketing purposes pertains to health plan listings and benefit information. This does not extend to current patients, conventional mail, or other print medias.



# Marketing Unsolicited Contacts

Providers may not make unsolicited telephone calls to prospective enrollees expect for the following specific telephonic activities:

- Call current enrollees, including those in non-Medicare products, to discuss plan business
  - Calls to enrollees aging into Medicare from commercial products offered by the same organization
  - Calls to existing Medicaid/MMP plan enrollees to talk about its Medicare products
- Call former enrollees to conduct disenrollment surveys for quality improvement purposes (may not include sales or marketing information)
  - Call to market plans or products to former enrollees who have disenrolled, or to current enrollees who are in the process of voluntarily disenrolling;



# Marketing Unsolicited Contacts

Providers may not initiate Electronic Communication, including voicemail or direct messages, for marketing purposes unless an individual has agreed to receive those communications.

- If an individual likes or follows on social media, this does not constitute agreement to receive communication outside a public forum.
  - Providers may respond to questions or statements initiated by the beneficiary but only in the scope of the question.
- Providers may contact via email but must provide an opt-out process for recipients.



# Websites & Social/ Electronic Media

CMS has many rules and regulations around social media and website marketing; it is important to check with and necessary approvals you proceed.

- **MUST** ensure if you direct a consumer to call a phone number, you **MUST** clearly indicate that “calling the phone number will direct the individual to a licensed agent/broker” (when applicable)
- **MUST** ensure any sites used for the purpose of generating leads **MUST** also comply with Carrier and CMS requirements
- **MUST** ensure if you purchase leads from any lead generation websites, those websites **MUST** comply with CMS requirements
- **MUST** use required marketing disclaimers on websites containing info specific to Carrier MA, MAPD, PDP products



# Websites & Social/ Electronic Media

- **MAY NOT** ask for any health info, including (but not limited to): pre-existing medical conditions, weight, whether beneficiary smokes, their age, etc.
- **MAY NOT** ask for any beneficiary identification numbers, including (but not limited to): Social Security, Health Insurance Claim Number (HICN), and Medicaid
- **MAY NOT** ask for beneficiary financial info, including credit card numbers, income and resource limits, etc.
- **MAY NOT** ask for referrals from beneficiaries via your website or offer enrollment into Carrier MA/MAPD/PDP plans on your website
- **MAY NOT** use the word “free” when referring to Medicare plan benefits



# Thank you!

Knowledge Quiz: [I:\Provider Marketing Guidelines Training](#)

For more information, please visit: <https://www.cms.gov/Medicare/Health-Plans/ManagedCareMarketing/FinalPartCMarketingGuidelines>