Regulatory Criteria

Marketing in a Health Care Setting

**Medicare Managed Care Manual Chapter 3-Medicare Marketing Guide**

**Section 10: Introduction**

Plans/Part D Sponsors are responsible for ensuring compliance with CMS’ current marketing regulations and guidance, including monitoring and overseeing the activities of their subcontractors, downstream entities, and/or delegated entities.

**Section: 70.11 - Marketing in the Health Care Setting**

We recognize that Plans/Part D Sponsors have agreements with providers in connection with plan activities and expect those agreements to address marketing activity in a manner consistent with Medicare regulations. These requirements are discussed throughout this section. Plans/Part D Sponsors and providers with whom they have a relationship (contractual, co-branding or otherwise) who assist beneficiaries with plan selection should ensure that provider assistance results in plan selection that is always in the best interest of the beneficiary.

Plans/Part D Sponsors may not conduct sales activities in healthcare settings except in common areas. Common areas where marketing activities are allowed include areas such as hospital or nursing home cafeterias, community or recreational rooms, and conference rooms. If a pharmacy counter area is located within a retail store, common areas would include the space outside of where patients wait for services from or interact with pharmacy providers and obtain medications.

Plans/Part D Sponsors are prohibited from conducting sales presentations, distributing and accepting enrollment applications, and soliciting Medicare beneficiaries in areas where patients primarily receive health care services or are waiting to receive health care services. These restricted areas generally include, but are not limited to, waiting rooms, exam rooms, hospital patient rooms, dialysis center treatment areas (where patients interact with their clinical team and receive treatment), and pharmacy counter areas (where patients interact with pharmacy providers and obtain medications). The prohibition against conducting marketing activities in health care settings extends to activities planned in health care settings outside of normal business hours.

Plans/Part D Sponsors are only permitted to schedule appointments with beneficiaries residing in long-term care facilities (including nursing homes, assisted living facilities, board and care homes, etc.) upon request by the beneficiary. Plans/Part D Sponsors may use providers to make available and/or distribute plan marketing materials as long as the provider and/or the facilities distributes or makes available Plan/Part D Sponsor marketing materials for all plans with which the provider participates. CMS does not expect providers to proactively contact all participating plans; rather, a Plan/Part D Sponsor must only ensure that a provider agrees to make available and/or distribute plan marketing materials and accept future requests from other Plans/Part D Sponsors with which the providers participate. Plans/Part D Sponsors may also provide materials for providers to display posters or other materials in common areas such as the provider’s waiting room. Additionally, Plans/Part D Sponsors may provide materials to long-term care facilities to provide materials in admission packets announcing all plan contractual relationships.

SNP plans may provide to long term care facility staff, for distribution to residents that meet the I-SNP criteria, an explanatory brochure for each I-SNP with which the facility contracts. The brochure can explain about the qualification criteria and the benefits of being enrolled in an I-SNP. The brochure may have a reply card or telephone number for the resident or responsible party to call to request a meeting or additional information.

Source: Chapter 3 of the Medicare Managed Care Marketing Guide (May, 2015)
Section: 70.11.1 Provider-Based Activities

CMS is concerned with Plans/Part D Sponsors engaging in provider-based marketing activities because:

- Providers may not be fully aware of all plan benefits and costs
- Providers may confuse the beneficiary if the provider is perceived as acting as an agent of the plan versus acting as the beneficiary’s provider
- Providers may face conflicting incentives when acting as a Plan/Part D Sponsor representative

We recognize that Plans/Part D Sponsors have agreements with providers in connection with plan activities and expect those agreements to address marketing activity in a manner consistent with Medicare regulations. This includes ensuring that if a provider advertises non-health related items or services, the advertisement makes it clear that those items/services are not covered by the Plan/Part D Sponsor. To the extent that the Plan/Part D Sponsor ensures that a provider assists a beneficiary in an objective assessment of his/her needs and potential options to meet those needs, the Plan/Part D Sponsor may use providers for such activities. Plans/Part D Sponsors may allow contracted providers to engage in discussions with beneficiaries should a beneficiary seek advice. However, Plans/Part D Sponsors must ensure, through their agreements with providers, that contracted providers are advised of the need to remain neutral when assisting with enrollment decisions and that providers do not:

- Offer scope of appointment forms
- Accept Medicare enrollment applications
- Make phone calls or direct, urge or attempt to persuade beneficiaries to enroll in a specific plan based on financial or any other interests of the provider
- Mail marketing materials on behalf of Plans/Part D Sponsors
- Offer anything of value to induce plan enrollees to select them as their provider
- Offer inducements to persuade beneficiaries to enroll in a particular plan or organization
- Conduct health screening as a marketing activity
- Accept compensation directly or indirectly from the plan for beneficiary enrollment activities
- Distribute materials/applications within an exam room setting

Plans/Part D Sponsors may use and allow contracted providers to:

- Provide the names of Plans/Part D Sponsors with which they contract and/or participate (see section 70.11.2 for additional information on provider affiliation)
- Provide information and assistance in applying for the LIS
- Make available and/or distribute plan marketing materials
- Refer their patients to other sources of information, such as SHIPs, plan marketing representatives, their State Medicaid Office, local Social Security Office, CMS’ website at http://www.medicare.gov/ or 1-800-MEDICARE
- Share information with patients from CMS’ website, including the “Medicare and You” Handbook or “Medicare Options Compare” (from http://www.medicare.gov), or other documents that were written by or previously approved by CMS

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<th>Federal Code of Regulation</th>
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<td>42 CFR 422.2268 (e), (j) and (k)</td>
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Source: Chapter 3 of the Medicare Managed Care Marketing Guide (May, 2015)
42 CFR 423.2268 (j), (e) and (k) contract. The use of publicly available comparison information is permitted if approved by CMS in accordance with the Medicare marketing guidance.

(k) Conduct sales presentations or distribute and accept MA plan enrollment forms in provider offices or other areas where health care is delivered to individuals, except in the case where such activities are conducted in common areas in health care settings.

(e) Engage in activities that could mislead or confuse Medicare beneficiaries, or misrepresent the Part D sponsor or its Part D plan. The Part D organization may not claim that it is recommended or endorsed by CMS or Medicare, or that CMS or Medicare recommends that the beneficiary enroll in the Part D plan. The Part D organization may explain that the organization is approved for participation in Medicare.

(j) Use providers, provider groups, or pharmacies to distribute printed information for beneficiaries to use when comparing the benefits of different Part D plans unless providers, provider groups or pharmacies accept and display materials from all Part D plan sponsors with which the providers, provider groups or pharmacies contract. The use of publicly available comparison information is permitted if approved by CMS in accordance with the Medicare marketing guidelines.

(k) Conduct sales presentations or distribute and accept Part D plan enrollment forms in provider offices, pharmacies or other areas where health care is delivered to individuals, except in the case where such activities are conducted in common areas in health care settings.

**Medicare Managed Care Manual Chapter 21-Compliance Program Guidelines**

**Section:** 10 Definitions

**First Tier Entity** is any party that enters into a written arrangement, acceptable to CMS, with an MAO or Part D plan sponsor or applicant to provide administrative services or health care services to a Medicare eligible individual under the MA program or Part D program.