



A, B, C, Ds of MEDICARE



## Ensuring Marketing Compliance

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## Purpose of Session?

- *Define Marketing and its many components*
  - What is Marketing and what is not
- Overview and Goals of Marketing Guidance
  - 2010 Annual Documents Schedule
  - Marketing Guidelines
  - General timeframes for review of materials
  - Model, Standard, F & U, General review.
- **Discuss permissible Marketing practices**
- **Compliance with Regulations and Marketing Guidelines**



## What is Marketing?

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- *Steering or attempting to steer* an undecided potential enrollee towards a Plan, or limited number of Plans, for which *the individual or entity performing marketing activities expects compensation* directly or indirectly from the Plan for such marketing activities.



# What is Marketing

- CMS defines it even further as the primary means for organizations to attract people with Medicare to their products – accuracy and timeliness in data file submissions and exchanges, compliance with systems requirements, and timely and reliable outreach are essential to helping inform people with Medicare about their choices. In addition, organizations are responsible for making sure that brokers or others authorized to represent an organization’s plan or plans operate according to all guidance and requirements related to marketing, including those stated in our marketing guidance, the marketing chapters of the Managed Care and Part D manuals and the program requirements for Part C and, if offering a Medicare prescription drug benefit, Part D (Parts 422 and 423, respectively, of Title 42 of the Code of Federal Regulations).
- Includes promotional activities
- Does not include:
  - Assisting in enrollment
  - Education

We will discuss these items in further details.



## What constitutes an act of Marketing

- Any activity of an employee or plan sponsor, an independent agent, an independent broker or similar managerial marketing position intended to affect a beneficiary's choice among Medicare plans.
- Marketing by a person who is directly employed by an organization with which a plan sponsor contracts with to perform marketing or a downstream marketing contractor, is considered marketing by the plan sponsor.
- *42CFR 422.2272 (c) and 423.2272 (c) state that plan sponsors must comply with State appointment laws for an agent or broker to sell Medicare products, that agent or broker must be appointed in accordance with the state appointment law and that if there are any fees required as part of the appointment law, the fees must be paid.*
- Plan sponsors are reminded that they are responsible for all downstream activities made on their behalf.



## .... And What is not

- **There are plan activities, typically carried out by plan sponsor's customer service department, that do not require the use of State-licensed marketing representatives, these include the following:**
  - Providing factual information.
  - Fulfilling a request for materials
  - Taking demographic information in order to complete an enrollment application at the initiative of the prospective enrollee.

Reference 42 CFR422.2274 (c ), 423.2274 (c ) Draft Guidelines Section 120.6



## Annual Call Letter

- **The Call Letters contain information on the Part C, cost-based, and Part D programs combined into one document. Also, we indicate when sections apply to PACE and employer and union-sponsored group health plans.**
- **In the 2010 Call Letter Section A provides MA, MA-PD, and cost plan guidance; Section B provides information for Part D sponsors; Section C contains marketing-related information that applies to all plan types; and Section D contains attachments to the material contained in Sections A-C.**



## *2010 MA, MA-PD, and Cost Plan Calendar*

- In order to assist you in meeting all deadlines for renewal, enrollment, bidding, and other provisions as you prepare to offer health care benefits in 2010, we are including a calendar of key dates and timelines. Please note that, except as otherwise specified in statute or regulation, the dates given here are subject to change. Organizations should also note that these dates are not exhaustive, and they must consult the appropriate sections of the Part C, cost plan, and Part D regulations and guidance for important information associated with these timelines.
- The Part D section of this Call Letter includes a table of key dates for Part D sponsors including MA and Cost organizations offering a prescription drug benefit under Part D. Organizations should continue to monitor the general applications timeline posted on the CMS website at <http://www.cms.hhs.gov/MedicareAdvantageApps/>.



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- *See Attachment – 2010 Marketing Submission Calendar*



## Overview and Goals of Marketing Guidance

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- Medicare Marketing Guidelines apply to all types of Medicare health plans:
  - Medicare Advantage (MA) only plans,
  - Medicare Advantage Prescription Drug (MA-PD) plans,
  - Prescription Drug plans (PDPs), and
  - 1876 Cost plans



## Goals of Marketing Guidance

- Medicare Marketing Guidelines:
  - Assist Medicare Health Plans with the development of accurate, consumer-friendly marketing materials
  - Ensure that plans are compliant with all aspects of marketing
  - Ensure the accuracy and consistency of marketing information
  - Expedite the review process



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## Marketing Review Entity

- MA-PDs, PDPs, and 1876 Cost Plans – Marketing material reviews are performed by the ten CMS Regional Offices in accordance with 42CFR422 , 423 and Marketing guidelines.
- Marketing and Policy clarification issues are addressed to the MAO's Account Manager who will present it to the Marketing lead for review and response.



## Plan Marketing Responsibilities

- **Medicare Health Plans and Agents may not**
  - Solicit Medicare beneficiaries door-to-door
    - Unless invited
  - Send unsolicited email
  - Enroll people by phone
    - Unless the person calls them
  - Offer cash payment as an inducement to enroll
  - Misrepresent or use high pressure sales tactics



# Plan Activities in the Health Care Setting

*\*Plans may only market in COMMON AREAS\**

## Plans MAY:

- Conduct sales presentations
- Distribute and accept enrollment applications
- Schedule appointments with beneficiaries upon request (including those in LTC settings)

## Plans MAY NOT:

- Mislead or pressure potential enrollees into participating in these activities



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## What are “Common Areas”?

### Common Areas:

- Hospital or nursing home cafeterias
- Community or recreational rooms
- Conference rooms
- Pharmacy counter located AWAY from where patients wait for services or interact with pharmacy providers and obtain medications

### NOT Common Areas:

- Areas where patients primarily intend to receive health care services
- Waiting rooms
- Exam rooms
- Hospital patient rooms
- Pharmacy counter areas where patients wait for services or interact with pharmacy providers and obtain medication



## Provider Promotional Activities

- Providers **MAY**:
  - Educate potential enrollees
  - Assist them in enrollment
  - Include pharmacists, pharmacies, physicians, hospitals, and long-term care (LTC) facilities
- Providers **MUST** agree to the same restrictions and conditions that apply to the Plan through its contract.



## Provider Affiliation Information

### Providers MAY:

- Announce new affiliations as many times as desired through **GENERAL** advertising
- Announce the new affiliation **ONLY ONCE** via direct mail or email; otherwise the provider must provide affiliation information on all participating Plans

### Providers MUST:

- Include all participating Plans in affiliation banners, displays, brochures, and/or posters located on the premises of the provider
- Receive CMS approval to distribute affiliation communication material that describes Plans in any way



## Leads from Providers

- Plans/providers are responsible for following all Federal and State laws regarding confidentiality and disclosure of patient information to MA Organizations and Plan sponsors for marketing purposes, including HIPAA
- Plans are **subject to sanction** for engaging in any practice that may in the effect deny or discourage enrollment of individuals whose medical condition or history indicates a need for substantial future medical services (i.e., **health screening or “cherry picking”**)



## In Summary, Providers CAN:

- ✓ Provide names of plans with which they participate
- ✓ Provide OBJECTIVE information on specific plans
- ✓ Distribute PDP marketing materials, including Enrollment applications\*
- ✓ Distribute MA and/or MA-PD marketing materials, excluding enrollment applications\*
- ✓ Provide information and assistance in applying for the limited income subsidy
- ✓ Refer patients to other sources of information
- ✓ Print out and share information with patients from CMS web site
- ✓ Use comparative marketing materials created by a non-benefit/service providing third-party

*\* MUST inform patients where they may obtain information on ALL options, i.e., Medicare web site and toll-free number*



## Providers CANNOT:

- ❑ Direct, urge, or attempt to persuade any prospective enrollee to a particular company based on financial or any other interest of the provider (or subcontractor)
- ❑ Collect enrollment applications
- ❑ Offer inducements to persuade beneficiaries to enroll in a particular plan or organization
- ❑ Conduct health screens when distributing information to patients
- ❑ Offer anything of value to induce Plan enrollees to select them as a provider
- ❑ Expect compensation directly or indirectly from the Plan for beneficiary enrollment activities



## Types of Marketing Review Activity

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### **Marketing Review includes:**

- Pre-approval of marketing materials before they are used by the plan
- On-site marketing review of facilities, products and activities during contract compliance monitoring visits
- Random review of marketing pieces in the marketplace
- “For cause” review of materials and activities in response to complaints



# Marketing Review

- All organizations are required to submit marketing materials via HPMS
- Standard 45-day non-model review
- 10-day review of model documents used without modification
- File & Use Certification
- File & Use Eligibility
- Expedited Review Process
- Model documents are found on CMS' website



## Standardized Language

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- Specific language developed by CMS for certain marketing materials
- *MANDATORY for use by Organizations (when available)*



## What are Model Materials?

- CMS-drafted model language
- *When utilized without modification, material receives 10-day review*
- If model language is available and not used, material must include all elements of the model and required language/disclaimers as outlined in the appropriate sections of the Guidelines



## Marketing Review Authority

- 42 CFR 422.80(a) and the Medicare Marketing Guidelines
  - Plans may not distribute any marketing materials or election forms or make such forms available to individuals eligible to elect a MA organization
  - unless at least 45 days (or 10 days if using model language as specified by CMS) before the date of distribution, the MA organization has submitted the materials for review
  - and CMS does not disapprove the distribution of new material



## Common Pitfalls of Marketing Materials

- Superlatives
- Testimonials/Endorsements
- Substantiation of survey results
- Marketing material modification by rogue sales reps



## Remember This

- CMS does not disapprove marketing materials based on typos or grammar errors
- Professional excellence is the responsibility of the organization
- Marketing materials, once approved remain approved
- CMS may require plans to change previously approved materials if found inaccurate



## Helpful Tips for Plans

### Material ID Numbers:

- Plans must begin with the MA or PDP contract number, or “S”, “H” number, plus a hyphen, e.g., **“S1234- ”** followed by any series of alphanumeric characters
- The Material ID listed in HPMS must be the SAME as the one included on the material. *This is used to track all marketing materials within the marketplace*



## Helpful Tips for Plans (Cont'd.)

CMS approval date must be:

- On ALL marketing pieces, except membership identification card, television and radio ads, outdoor advertisements, and banner or banner-like ads
- In the *lower left- or lower right-hand corner of the material adjacent to the Material ID*

\*The CMS approval date placeholder should not be populated when submitted – the approval date will be the date on the CMS approval notice.



## Helpful Tips for Plans (Cont'd.)

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### Benefits Information

- Ensure that all benefits mentioned in marketing materials match information in the Plan Benefit Package (PBP), Notes etc.

*Materials submitted containing conflicting benefits information will be disapproved.*



## Consequences

- *Organizations who engage in practices that violate the Marketing provisions may be subject to compliance actions, ie, notice of concern, Corrective Action Plan (CAP), Civil Monetary Penalties (CMPs) and/ or sanction. 42CFR422 and 42CFR423.*