



# 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.

# 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.

# Definitions

- To identify marketing activities and materials, CMS will evaluate both the **intent and content** of the activities and materials to determine if the definition of marketing is met.
  - 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.

# Definitions

- 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.
- A letter is sent to enrollees to remind them to get their flu shot. The body of the letter says, “Swell Health enrollees can get their flu shot for \$0 copay at a network pharmacy...” Marketing or Communication? Communication. While the letter mentions cost sharing, the intent is not to steer the reader into making a plan selection or to stay with the plan, but rather to encourage existing enrollees to get a flu shot. The letter contains factual information about coverage and was provided only to current enrollees.

# Providers Must

- Providers must remain neutral when assisting patients with information about their Medicare plan options.
- Any communications by providers to patients must come from the provider or medical group and not the agent or health plan in a misleading way.
- Be aware of agent or health plan engagement in marketing events and ensure they are within the scope of CMS guidelines.

# Providers May

- If providers allow plan marketing materials to be available in their common areas, then:
  - Provider must allow **ALL** contracting plans to participate.
- Display posters or other materials announcing plan affiliations.
- Direct patient to plan materials in common areas.
- Refer patients to other sources for more information, such as:
  - CMS/Medicare.gov website, HICAP/SHIP office, etc.
- If **patient initiates** request, provider may refer to plan or plan marketing representatives (brokers or agents.)

# Providers May

- Provide names and contact information of Health Plans they contract with and any factual, publicly available information about plan benefits and formularies.
  - Example: Information from *Medicare and You* or *Medicare Options Compare*.
- Provide information and assistance to patients applying for Low Income Subsidy (LIS/Extra Help.)
- Display plan marketing materials (but **not** enrollment forms) in waiting rooms.



# Providers May NOT

- Provide an endorsement or testimonial for a health plan
- Mislead or pressure patients into participating in presentations.
- Use health screenings as a marketing activity.
- Offer anything of value to induce beneficiaries to enroll in a particular plan or set of plans.
- Provide list of Medicare eligible patients to an agent or health plan representative.
- Conduct marketing, sales, or enrollment activities in areas where patients receive or wait to receive care:
  - Example: Exam rooms, waiting rooms, etc.

# Providers May NOT

- Distribute/display marketing materials in an exam room.
- Distribute sales agents' business cards to patients (unsolicited.)
- Make available/distribute, help complete, or accept completed enrollment applications.
- Offer or assist with Scope of Appointment Forms, lead cards and/or business reply cards.
- Make phone calls or distribute materials in an attempt to steer, direct, urge or persuade beneficiaries to enroll in a specific plan or set of plans.
- Mail marketing materials on behalf of a plan or agent.
- Accept compensation directly or indirectly from a plan for enrollment activities.

# Promotional Activities

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

- Be of nominal value – no more than \$15, with a maximum aggregate of \$75/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 the nominal gift is one large gift (e.g., concert, raffle, drawing, etc.) the total value must not exceed the nominal per person value based on attendance.
  - Example) For 10 attendees, the gift may not be worth more than \$150.

# Promotional Activities

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

- 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.

# Marketing Unsolicited Contacts

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.

# Thank You

For a comprehensive understanding of CMS Marketing Guidelines visit:

<https://www.cms.gov/Medicare/Health-Plans/ManagedCareMarketing/FinalPartCMarketingGuidelines.html>