

## Appendix IV — Marketing Guidelines

### Appendix IV-A — Medicaid Marketing Guidelines for Medical Service Providers

#### Definitions

“**Providers**” shall mean all physicians or medical facilities (hospitals, clinics, diagnostic and treatment centers, and physician group practices) that contract with one or more Medicaid managed care organizations.

“**Marketing**” shall mean all forms of communication, written or oral, used to encourage or induce Medicaid recipients to enroll in a managed care plan.

#### Appropriateness of Advertising and Outreach Materials

1. Advertising and outreach materials must be pre-approved by the State Department of Health (SDOH) or the Local Department of Social Services (LDSS) prior to distribution.
2. Providers shall not engage in marketing practices, nor distribute any advertising and outreach materials, that mislead, confuse, or defraud eligible persons, the public, or any government agency. Providers may not misrepresent the Medicaid program, the Medicaid managed care program, or the program or policy requirements of the LDSS or the SDOH.

**Reminder: Medicaid recipients may never be told by their providers that they have to join a plan now—they will never have to make a selection until they receive their official notices.**

3. Advertising and outreach materials must accurately reflect general information which is applicable to the average consumer of Medicaid managed care. Advertising and outreach materials must provide as much information as possible to allow consumers to choose the plan that best meets their needs.
4. Providers may not use any federal, state, or local government logos in their materials. Care should be taken to avoid the format and colors used in informational materials by these entities to ensure that there is not confusion about their sources.

#### Permitted/Impermissible Advertising and Outreach Activities

1. Advertising and outreach activities may not discriminate on the basis of a potential member's health status, prior health service use, or need for future healthcare services.
2. Providers may not conduct “cold call” telephone solicitations.
3. Providers may not provide mailing lists of their patients to managed care organizations (MCO). Providers may not provide mailing lists of their patients to managed care organizations (MCO).
4. Providers may give permission to managed care organization marketing representatives to conduct advertising and outreach activities at their facility. If the providers are in multiple plans and allow one (1) plan to market in their facilities or want to let their patients know of their affiliation with one (1) or more MCOs, they must prominently display a list of all other managed care plans operating in the county or borough **with which they are contracted**.
5. Physicians may speak to their patients about their MCO affiliation and should encourage the patient to make their choice of plan based on the health needs of the patient and his/her family. Such advice, whether presented verbally or in writing, must be individually based and not merely a promotion of one (1) plan over another.
6. Neither the provider nor MCO-facilitated enrollment representatives may market in emergency room facilities, treatment rooms, or hospital patient rooms. MCOs may not require providers to distribute plan-prepared communications to their patients.

7. In the event a provider is no longer affiliated with a particular MCO but remains affiliated with other participant MCOs, the provider may notify his/her patients of the new status and the impact of such change on the patient.
8. All advertising and outreach activities shall be conducted in an orderly, nondisruptive manner and shall not interfere with the privacy of potential members or the general community.
9. Providers shall not target individuals and families who are already enrolled in other managed care plans.

### Inducements to Enroll

1. Providers may not offer material or financial gain to Medicaid beneficiaries as an inducement to enroll. Specifically, providers may only:
  - a. make reference in advertising and outreach materials and activities to benefits/services offered under the program; and
  - b. offer only nominal gifts, with a fair market value of no more than \$5, with such gifts being offered regardless of beneficiary's intent to enroll.
2. Providers shall not pay any individual, or accept payment from a Medicaid MCO, any commission, bonus, or similar compensation that uses numbers of Medicaid-eligible persons enrolled in the managed care plan as a factor in determining compensation.

## Appendix IV-B — Medicare Marketing Guidelines

The term “**provider**” means all Medicare health plan-contracting healthcare delivery network members (e.g., physicians, hospitals, etc.) The purpose of this section is to specify what marketing practices in this area meet both CMS requirements and the needs of the Medicare health plans with respect to entities considered providers by Medicare health plans.

CMS holds health plans responsible for any comparative/descriptive material developed and distributed on their behalf by their contracting providers. Therefore, Healthfirst must ensure that any providers contracted (and its subcontractors, including providers or agents) comply with the CMS marketing requirements.

Healthfirst (and subcontractors, including contracted providers or agents) is prohibited from steering or attempting to steer an undecided potential enrollee toward a particular provider, or limited number of providers, based on the financial interest of the provider or agent (or their subcontractors or agents).

Providers are limited to assisting beneficiaries with enrollment or education. Assisting with enrollment means discussing characteristics of various plans based solely on the potential enrollee's needs. Plan sponsors are held responsible for comparative/descriptive materials developed and distributed on their behalf by providers.

CMS is concerned with provider marketing for the following reasons:

- Providers may not be fully aware of all plan benefits and costs; and
- 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.

A provider may face conflicting incentives when acting as a plan sponsor representative since he/she knows the patient's health status. The desire to either reduce out-of-pocket costs for their sickest patients or to gain financially by enrolling their healthy patients may result in recommendations that do not address all of the concerns or needs of a potential Medicare health plan member.

Providers should remain neutral parties in assisting plan sponsors with marketing to beneficiaries or assisting with enrollment decisions. Providers not being fully aware of plan benefits and costs could result in beneficiaries not receiving information needed to make an informed decision about their healthcare options.

Therefore, it would be inappropriate for providers to be involved in any of the following actions:

- Offering sales/appointment forms.
- Accepting enrollment applications for Medicare Advantage (MA)/Medicare Advantage Part D (MA-PD) plans or Prescription Drug Plans (PDPs).
- Directing, urging, or attempting to persuade beneficiaries to enroll in a specific plan based on financial or any other interests.
- Mailing marketing materials on behalf of plan sponsors.
- Offering anything of value to induce plan enrollees to select them as their provider.
- Offering inducements to persuade beneficiaries to enroll in a particular plan or organization.
- Health screening and distributing information to patients are prohibited marketing activities.

Participating providers and contractors are permitted to do the following:

- Provide the names of plan sponsors with which they contract and/or participate.
- Provide information and assistance in applying for Medicare Extra Help, the Medicare Part D Low Income Subsidy program.
- Make available and/or distribute plan marketing materials for a subset of contracted plans only as long as providers offer the option of making available and/or distributing marketing materials to all plans with which they participate. CMS does not expect providers to proactively contract all participating plans to solicit the distribution of their marketing materials: rather, if a provider agrees to make available and/or distribute plan marketing materials for some of its contracted plans, it should do so knowing it must accept future requests from other plan sponsors with which it participates. To that end, providers are permitted to:
  - Provide objective information on plan sponsors' specific plan formularies, based on a particular patient's medications and healthcare needs. Provide objective information on plan sponsors' specific plan formularies, based on a particular patient's medications and healthcare needs.
  - Provide objective information regarding plan sponsors' plans, including information such as covered benefits, cost sharing, and utilization management tools.
  - Make available and/or distribute plan marketing materials, including PDP enrollment applications but not MA or MA-PD enrollment applications, for all plans with which the provider participates.
  - To avoid an impression of steering, providers should not deliver materials/applications within an exam room setting.
  - Refer their patients to other sources of information, such as SHIPs, plan marketing representatives, their State Medicaid Office, local Social Security Office, CMS's website at [www.medicare.gov](http://www.medicare.gov) or 1-800-MEDICARE.
  - Print out and share information with patients from CMS's website.

The "Medicare and You" Handbook or "Medicare Options Compare" ([www.medicare.gov](http://www.medicare.gov)) may be distributed by providers without additional approvals. There may be other documents that provide comparative and descriptive material about plans, of a broad nature, that are written by CMS or have been previously approved by CMS. These materials may be distributed by plan sponsors and providers without further CMS approval. This includes CMS Medicare Prescription Drug Plan Finder information via a computer terminal for access by beneficiaries. Plan sponsors should advise contracted providers of the provisions of these rules.

There are some permissible delegated provider marketing activities. The following are requirements associated with provider activities:

1. **Plan Activities and Materials in the Healthcare Setting** – While providers are prohibited from accepting enrollment applications in the healthcare setting, plans or plan agents may conduct sales presentations and distribute and accept enrollment applications in healthcare settings so long as the activity takes place in the common areas of the setting and patients are not misled or pressured into participating in such activities. 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 is located within a retail store, common areas would include the space outside of where patients wait for services or interact with pharmacy providers and obtain medications.
  - a. Plans are prohibited from conducting sales presentations and distributing and accepting enrollment applications in areas where patients primarily intend to receive healthcare services. These restricted areas generally include, but are not limited to, waiting rooms, exam rooms, hospital patient rooms, and pharmacy counter areas (where patients wait for services or interact with pharmacy providers and obtain medications).

*Please note: Upon request by the beneficiary, plans are permitted to schedule appointments with beneficiaries residing in long-term care facilities just as with other individuals.*

2. **Provider Affiliation Information** – Providers may announce new affiliations and repeat affiliation announcements for specific plans through general advertising (e.g., publicity, radio, television). An announcement to patients of a new affiliation which names only one plan may occur only once when such announcement is conveyed through direct mail and/or email. Additional direct mail and/or email communications from providers to their patients regarding affiliations must include all plans with which the provider contracts. Provider affiliation banners, displays, brochures, and/or posters located on the premises of the provider must include all plans with which the provider contracts. Any affiliation communication materials that describe plans in any way (e.g., benefits, formularies) must be approved by CMS.

*Please note: Materials that indicate the provider has an affiliation with certain plans and lists only plan names and/or contact information do not require CMS approval.*

3. **Comparative and Descriptive Plan Information** – Providers may distribute printed information provided by a plan sponsor to their patients comparing the benefits of different plans (all or a subset) with which they contract. Materials may not “rank order” or highlight specific plans and should include only objective information. Such materials must have the concurrence of all plans involved in the comparison and must be approved by CMS prior to distribution (i.e., these items are not subject to File & Use Certification). The plans must determine a lead plan to coordinate submission of these materials. CMS continues to hold the plans responsible for any comparative/descriptive material developed and distributed on their behalf by their contracting providers. Providers may not health screen when distributing information to their patients, as health screening is a prohibited marketing activity.

*Please note: Plans may not use providers to distribute printed information comparing the benefits of different plans unless providers accept and display materials from all plans in the service area and contract with the provider.*

4. **Comparative and Descriptive Plan Information Provided by a Non- Benefit/Service Providing Third-Party** – Providers may distribute printed information comparing the benefits of different plans (all or a subset) in a service area when the comparison is done by an objective third party.

5. **Providers/Provider Group Websites** – Providers may provide links to plan enrollment applications and/or provide downloadable enrollment applications. The site must provide the links/downloadable formats to enrollment applications for all plans with which the provider participates. As an alternative, providers may include a link to the CMS Online Enrollment Center.

*Medicare Marketing Guidelines for Medicare Advantage Plans Specific Guidance about Provider Promotional Activities (Sections 70.11.1; 70.11.2 and 70.11.5) July 2, 2015..*

A full copy of the most current Medicare Marketing Guidelines is available on the Centers for Medicare & Medicaid Services (CMS) website at [www.cms.gov/Medicare/Health-Plans/ManagedCareMarketing/FinalPartCMarketingGuidelines.html](http://www.cms.gov/Medicare/Health-Plans/ManagedCareMarketing/FinalPartCMarketingGuidelines.html)