

Marketing in a Healthcare Setting and Provider Related Communication & Marketing Materials

The purpose of this document is to provide guidelines on CMS regulations when Marketing in a Healthcare setting and/or working with or partnering with Providers.

The guidelines are outlined below. This is not meant to be inclusive of all applicable laws and regulations; but are intended to help Agencies/Agents meet compliance standards. The Spark Compliance Team is here to help you with any marketing and communication materials you use to promote your Medicare business and to help you through the approval process.

Any and all agent/agency created materials must be submitted to Spark for compliance and approval. Depending on the material, we may or may not also have to submit to a Carrier and CMS for approval prior to use. Spark will handle those submissions and filings on your behalf.

Please allow plenty of time to get through the approval process.

General Guidelines on Marketing in a Healthcare Setting

Marketing representatives/Agents must NOT:

- Engage in marketing activities or provide marketing materials in areas where patients receive healthcare services, for example:
 - Exam rooms, dialysis center treatment areas, hospital patient rooms, pharmacy counter areas, and other treatment areas where patients interact with a provider and their clinical team and receive treatment.

Marketing representatives/Agents may:

- Engage in marketing activities (i.e., conduct sales presentations and distribute and accept enrollment applications) in common areas of healthcare settings, for example:

- In a cafeteria, community or recreational room, waiting room, common entryway, vestibule, or conference room
- At a retail pharmacy, in areas away from the pharmacy counter
- Provide communication materials to be distributed and displayed in the healthcare setting.

Marketing in a Long-term Care Facility

Long-term care facilities include, for example, nursing homes, assisted living facilities, and board and care homes.

- Marketing representatives/Agents may schedule an appointment with a beneficiary in a long-term care facility ONLY upon request of the beneficiary (or authorized representative).
- Marketing representatives/Agents may not visit individuals in a long-term care facility without an appointment.
- MA institutional special needs plans (I-SNPs) may use staff operating in a social worker capacity to provide information, including marketing materials concerning I-SNPs, to residents. Such information must not include an enrollment form and the social worker may not accept or collect a scope of appointment or enrollment form on behalf of the plan sponsor.
- Marketing representatives/Agents may set up in common areas of a long-term care facility and allow residents to approach them.

Materials that Mention Providers or Other Entities

Any communication or marketing material that mentions or involves a provider must be submitted by Spark for review.

Provider Office Materials must also be filed with a Carrier and then CMS for approval, with up to a 45-day review/approval window. Spark will file on your behalf.

The Agency/Agent must complete the additional questions below when working with a Provider.

For Materials containing any reference to a Provider, Provider Group, or Pharmacy, the following additional information is required:

- Agency Name
- Date submitting
- Provider Name(s)
- Does the Provider have a direct or indirect ownership interest in the Agency?
- Does the Agency have a direct or indirect relationship ownership interest in the Provider?
- Who is paying for:
 - Development/creation of the ad?
 - Printing of the ad? (if printed)
 - Mailing, publication or distribution of the ad?
- Who is the target audience?
- If the ad is a flier, brochure, or other communication to be handed out:
 - Who is distributing it?
 - Where will it be distributed?
- If the ad is a direct mail piece:
 - Will the piece be mailed by the Provider or the Agency?
 - What is the return address?
 - Who is it being sent to?
 - Where did the list of contacts/addresses come from?
 - If purchased, what entity purchased them?
- If the ad includes a Provider testimonial or endorsement:
 - Name of provider
 - Are they currently a practicing physician? If not, list the date they stopped practicing.
 - Are they contracted with any medical groups?
 - Are they contracted with any MA organization or Part D Plan sponsors?

- What is their specialty?
- If a TV personality, please provide a brief description of their program (TV, internet, etc.)
- Dates the material will be distributed
- If the material is Marketing, must have an SMID and meet all the requirements of a Marketing Material

In addition, the Agency/Agent must certify that each of the following statements are true prior to submitting for review. (Spark can send this out via Formstack for digital signature upon request. Email Compliance@SparkAdvisors.com)

____ There is no remuneration directly or indirectly exchanged between the Provider and Agency.

____ There is no quid pro quo agreement or understanding between the Provider and Agency that one entity will refer Medicare beneficiaries to the other in an inappropriate way.

____ Both the Agency and Provider only conduct marketing activities in compliance with CMS, HIPAA, and any other applicable federal and state laws, rules, and regulations, including, but not limited to:

- The Agency does not cold call or approach patients of the Provider in violation of CMS's non-solicitation requirements.
- The Agency does not use the Provider's patient information to send materials to the Provider's patients in violation of CMS or HIPAA requirements.
- The Agency's sales or marketing efforts are targeted towards the community, not only to the Provider's patients.
- The Agency does not solicit or conduct sales activities in areas where care is being administered, including, but not limited to: Exam rooms, hospital patient rooms, pharmacy counter area, and treatment areas where patients interact with providers/clinical team and receive treatment (i.e. dialysis treatment facilities).

- Plans are only sold or solicited by sales agents who are appropriately licensed, certified and appointed to sell those plans.
- The Provider remains neutral and only provides assistance to beneficiaries at the request of the patient or as a matter of a course of treatment, when meeting with the patient as part of the professional relationship between the provider and patient.
- The Provider does not make phone calls or direct, urge or attempt to persuade their patients to enroll in a specific plan based on financial or any other interests of the Provider.
- The Provider does not mail marketing materials on behalf of MA organizations.
- The Provider does not accept/collect scope of appointment forms.
- The Provider does not accept Medicare enrollment applications.
- The Provider does not conduct health screenings as a marketing activity.
- The Provider does not distribute marketing materials or enrollment forms in areas where care is being delivered.
- The Provider does not offer anything of value to induce enrollees to select the Provider.
- The Provider does not offer inducements to persuade their patients to enroll in a particular MA organization.
- The Provider does not accept compensation for any marketing or enrollment activities performed on behalf of the MA organization, either directly or indirectly.

_____ If there is a phone number on the ad, it clearly states which entity the phone number will reach.

_____ If there is a web address on the ad, it clearly states whose web address it is.

_____ The ad clearly explains why both the Provider and Agency appear on the ad.

For instance:

- o Are sales meetings being held at the Provider's facilities?
- o Is the Agency owned by the Provider?

Product Endorsements and Testimonials Requirements

- Agencies/Agents may use materials that involve a provider spokesperson and/or celebrity personality, in order to promote their agency.
- Any endorsement or testimonial that is made by a health care provider (even if another individual quotes the provider) must be discussed with and reviewed by Spark and a Carrier prior to use. Agencies/Agents may not pay or compensate provider(s) for testimonials in any way..
- The Agency/Agent is responsible for submitting these materials for review.

The following information must be provided when submitting the material for review:

- Name of provider/celebrity personality:
- Are they currently a practicing physician? If not, please list the date that they stopped practicing.
- Are they contracted with any medical groups?
- Are they contracted with any MA Organization or Part D Plan sponsors?
- What is their specialty?
- If a TV personality, please provide a brief description of their program (is it on TV, internet, etc.)
- Materials that include (or give the appearance of including) a provider must not:
 - Include a contracted provider.
 - Market or steer a beneficiary toward a particular Medicare Product or a set of Medicare Products, such as Humana MA/PDP plans.
 - Include the host promoting or appearing to promote the Sales Partner or the plans offered by the Sales Partner, such as stating, “ABC agency is the best and only represents the best plans.” The host may state the Sales Partner’s name and number and advise beneficiaries to call the Sales Partner to learn about plans that may be right for them.
- Any materials that include a provider must meet the following requirements:
 - Provider spokesperson should remain objective in any assessments made about possible Medicare Products.

- Any assessments about Medicare Products should be prefaced with “may” or similar terms, such as “These types of plans may be a good fit for...”
- Talking points and language must remain neutral and keep the best interest of the beneficiary in mind.
- Include the following disclaimer on the material, “(Provider name) IS NOT AFFILIATED WITH ANY PLAN OR PART D SPONSOR AND DOES NOT RECOMMEND OR ENDORSE ANY PARTICULAR PLAN OR PRODUCT.”
- Associated text and voiceover should describe only clinical, educational information (such as describing preventive services), or any plan or plans.
- Once the Carrier has reviewed and approved a material that includes a provider spokesperson, the TPMO may move forward with using the approved materials, with all edits and comments incorporated

Sales Agent Communication with Beneficiaries about Providers

- During a personal marketing appointment, the topic of providers should be discussed between the sales agent and beneficiary to ensure all of their needs are met. When discussing providers, it is important to remember the following:
 - Inform beneficiaries of all network providers that are available and ensure beneficiaries always feel completely free to choose any provider in the network.
 - Provide accurate and objective information to beneficiaries about the availability of all participating providers near their place of residence as part of a general description of a Medicare Product’s provider network.
 - ALWAYS use the carrier specific Physician Finder to look up provider participation as it is the most up-to-date and comprehensive list of participating providers.

Agents may:

- Provide factual information about a particular provider that is included in the Carrier Provider Directory, such as ratings available through the Care Highlights program.

Agents must not:

- Distribute materials describing a provider's services or marketing a provider's practice.
- Provide information about any free services or cost-sharing waivers offered by a provider unless they are part of the Plan benefit (e.g., complementary transportation).
- Recommend a provider or share opinion about which provider is best (e.g., do not use superlatives when describing a particular provider).
- Use aggressive marketing or high-pressure tactics when discussing providers.
- Use superlatives (e.g., "better care", "best care", etc.) when describing providers to beneficiaries.
- Offer or give anything to beneficiaries to persuade them to choose a particular provider.
- Accept anything, directly or indirectly, from a provider in exchange for communicating about or helping a beneficiary choose a particular provider (e.g., do not accept promises that provider's patients will choose a particular Plan, charitable donations, sponsorships, gifts, cash, etc.).
- Engage with providers in a way that may influence the agent's interaction with a member or prospect regarding their choice of a Provider, including but not limited to, entering into any arrangements with Providers, or offering, receiving or agreeing to offer or receive anything of value from a Provider or a Provider's representative unless the arrangement complies with all applicable laws and regulations, including but not limited to, the Federal Anti-kickback Statute, and the agent actions comply in all respects with the requirements noted in this document.

- Engage with providers in a way that would influence the provider to steer patients toward or set of plans or encourage a provider to steer patients towards a specific Carrier's plans

Once the Spark Compliance team reviews your materials, and you have made any changes necessary, we will submit the materials to a carrier for review. If they have revisions needed, we will send those to you. Once the carrier approves, we will then file with CMS for approval. You must have CMS approval prior to use. Please allow plenty of time for the marketing materials review and approval process.

Reach out to Compliance@SparkAdvisors.com with any questions.

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