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Title 42 – Public Health

Chapter IV – Centers for Medicare & Medicaid Services, Department of Health and Human Services

Subchapter B – Medicare Program

Part 422 – Medicare Advantage Program

Subpart V – Medicare Advantage Communication Requirements

Source: 73 FR 54220, Sept. 18, 2008, unless otherwise noted.

Authority: 42 U.S.C. 1302, 1306, 1395w–22 through 1395w–28, and 1395hh.

Source: 63 FR 18134, Apr. 14, 1998, unless otherwise noted.

Editorial Note: Nomenclature changes to part 422 appear at 70 FR 4741, Jan. 28, 2005.

§ 422.2266 Activities with healthcare providers or in the healthcare setting.

- (a) **Where marketing is prohibited.** The requirements in paragraphs (c) through (e) of this section apply to activities in the health care setting. Marketing activities and materials are not permitted in areas where care is being administered, including but not limited to the following:
- (1) Exam rooms.
 - (2) Hospital patient rooms.
 - (3) Treatment areas where patients interact with a provider and clinical team (including such areas in dialysis treatment facilities).
 - (4) Pharmacy counter areas.
- (b) **Where marketing is permitted.** Marketing activities and materials are permitted in common areas within the health care setting, including the following:
- (1) Common entryways.
 - (2) Vestibules.
 - (3) Waiting rooms.
 - (4) Hospital or nursing home cafeterias.
 - (5) Community, recreational, or conference rooms.
- (c) **Provider-initiated activities.** Provider-initiated activities are activities conducted by a provider at the request of the patient, or as a matter of a course of treatment, and occur when meeting with the patient as part of the professional relationship between the provider and patient. Provider-initiated activities do not include activities conducted at the request of the MA organization or pursuant to the network participation agreement between the MA organization and the provider. Provider-initiated activities that meet the definition in this paragraph (c) fall outside of the definition of marketing in § 422.2260. Permissible provider-initiated activities include:

Activities with healthcare providers or in the healthcare setting.

- (1) Distributing unaltered, printed materials created by CMS, such as reports from Medicare Plan Finder, the “Medicare & You” handbook, or “Medicare Options Compare” (from <https://www.medicare.gov>), including in areas where care is delivered.
 - (2) Providing the names of MA organizations with which they contract or participate or both.
 - (3) Answering questions or discussing the merits of a MA plan or plans, including cost sharing and benefit information, including in areas where care is delivered.
 - (4) Referring patients to other sources of information, such as State Health Insurance Assistance Program (SHIP) representatives, plan marketing representatives, State Medicaid Office, local Social Security Offices, CMS' website at <https://www.medicare.gov>, or 1–800–MEDICARE.
 - (5) Referring patients to MA plan marketing materials available in common areas;
 - (6) Providing information and assistance in applying for the LIS.
 - (7) Announcing new or continuing affiliations with MA organizations, once a contractual agreement is signed. Announcements may be made through any means of distribution.
- (d) **Plan-initiated provider activities.** Plan-initiated provider activities are those activities conducted by a provider at the request of an MA organization. During a plan-initiated provider activity, the provider is acting on behalf of the MA organization. For the purpose of plan-initiated activities, the MA organization is responsible for compliance with all applicable regulatory requirements.
- (1) During plan-initiated provider activities, MA organizations must ensure that the provider does not:
 - (i) Accept or collect Scope of Appointment forms.
 - (ii) Accept Medicare enrollment applications.
 - (iii) 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.
 - (iv) Mail marketing materials on behalf of the MA organization.
 - (v) Offer inducements to persuade patients to enroll in a particular MA plan or organization.
 - (vi) Conduct health screenings as a marketing activity.
 - (vii) Distribute marketing materials or enrollment forms in areas where care is being delivered.
 - (viii) Offer anything of value to induce enrollees to select the provider.
 - (ix) Accept compensation from the MA organization for any marketing or enrollment activities performed on behalf of the MA organization.
 - (2) During plan-initiated provider activities, the provider may do any of the following:
 - (i) Make available, distribute, and display communications materials, including in areas where care is being delivered.
 - (ii) Provide or make available marketing materials and enrollment forms in common areas.

(e) **MA organization activities in the health care setting.** MA organization activities in the health care setting are those activities, including marketing activities that are conducted by MA organization staff or on behalf of the MA organization, or by any downstream entity, but not by a provider. All marketing must comply with the requirements in paragraphs (a) and (b) of this section. However, during MA organization activities, the following is permitted:

- (1) Accepting and collect Scope of Appointment forms.
- (2) Accepting enrollment forms.
- (3) Making available, distributing, and displaying communications materials, including in areas where care is being delivered.

(f) **Activities of Institutional Special Needs Plans (I-SNPs) Serving Long-Term Care Facility Residents**

- (1) Depending on the context of a given situation, I-SNP contracted with a long-term care facility can be viewed as both a provider and a plan.
- (2) I-SNPs may use staff operating in a social worker capacity to provide information, including marketing materials (excluding enrollment forms), to residents of a long term care facility.
- (3) Social workers of the I-SNP (whether employees, agents, or contracted providers) may not accept or collect a scope of appointment or enrollment form on behalf of the I-SNP.
- (4) Unless the beneficiary or the beneficiary's authorized representative initiates additional contact with or by the plan, all other marketing and outreach activities in the beneficiary's room must follow the requirements for beneficiary contact under § 422.2264
- (5) All other activities with healthcare providers or in the healthcare setting must comply with §§ 422.2266(a), (b), (c), (d), and (e).

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