DevotedHealth

2022/2023 Agency Marketing and Communication Guide for Devoted Health

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Compliant Medicare Communications and Marketing

The purpose of this document is to provide guidance to agencies contracted with Devoted Health when developing communication and marketing materials. *The following guidelines apply specifically to all communication and marketing materials. It is not a comprehensive list of compliance guidelines that apply to the marketing and selling of Devoted Health products.*

Agencies must comply with Centers for Medicare & Medicaid Services (CMS), Title 42 of the Code of Federal Regulations (CFR) and any applicable state or federal laws, rules or regulations. This includes not only the content of the material, but how and when the material is used. All communications or marketing materials must include required disclaimers. All marketing materials must be submitted to CMS prior to use, pursuant to 42 CFR § 422.2261(a).

Marketing vs Communications

Communications: Activities and use of materials created or administered by the MA organization or any downstream entity to provide information to current and prospective enrollees.

Marketing: A subset of communications materials and activities that meet both the following standards for intent and content. **Marketing materials need to be submitted to CMS prior to use but Communication materials do not.* Communication activities and materials are distinguished from marketing activities and materials based on both **intent and content.**

Intent – Materials and activities that intend to draw a beneficiary's attention to a MA plan or plans, influence a beneficiary's decision-making process when making a MA plan selection, or influence a beneficiary's decision to stay enrolled in a plan (that is, retention-based marketing).

In evaluating the intent of an activity or material, CMS will consider objective information including, but not limited to, the audience of the activity or material, other information communicated by the activity or material, timing, and other context of the activity or material and is not limited to the MA organization's stated intent.

Content – Materials and activities that include or address content regarding any of the following:

- The plan's benefits, benefits structure, premiums or cost sharing.
- Measuring or ranking standards (for example, Star Ratings or plan comparisons).
- Rewards and incentives.

Advertisements intended to draw a beneficiary's attention to an MA plan or plans and include or address content regarding plan premiums, cost sharing, or benefit information, including those not mentioning a specific plan by name (as well as instances where such advertisements are made on behalf of multiple MA organizations), are considered marketing. These advertisements, as marketing materials, must be submitted to CMS prior to their use.

General Requirements

PY2023 Third-Party Marketing Organization (TPMO) Disclaimers

If your agency sells plans on behalf of more than one MA organization, you must include the following disclaimer on all PY2023 marketing materials.

"We do not offer every plan available in your area. Any information we provide is limited to those plans we do offer in your area. Please contact Medicare.gov or 1-800-MEDICARE to get information on all of your options."

This disclaimer must:

- Be electronically conveyed when communicating with a beneficiary through email, online chat, or other electronic means of communication;
- Prominently displayed on TPMO websites; and
- Included in any marketing materials, including print materials and television advertisements, developed, used or distributed.

When conducting lead generating activities, either directly or indirectly for an MA organization, TPMO's must, when applicable:

- Disclose to the beneficiary that his or her information will be provided to a licensed agent for future contact. This disclosure must be provided as follows:
    - Verbally when communicating with a beneficiary through telephone.
    - In writing when communicating with a beneficiary through mail or other paper.
    - Electronically when communicating with a beneficiary through email, online chat, or other electronic messaging platform.
- Disclose to the beneficiary that he or she is being transferred to a licensed agent who can enroll him or her into a new plan.

Anti-Discrimination

Plans may not discriminate based on race, ethnicity, national origin, religion, gender, sex, age, sexual orientation, gender identity, or mental or physical disability, health status, claims experience, medical history, genetic information, evidence of insurability, or geographic location. Additionally, web-based communications must be Section 508 compliant (generally—able to be read by a screen reader or other screen reader technology) so the member experience is comparable for those who may be vision or hearing impaired.

- **Do not require prospects to provide date of birth**. If the lead form asks for that information, it should be clear to the prospect that it is an optional field.
- **Avoid use of the term "senior"** as it may imply that people with Medicare are only eligible due to aging in (65+); CMS views the use of the term "senior" in some contexts as potentially discriminatory against those who have Medicare due to a qualifying disability. There are some instances where the term may be permissible, such as for plans that are only available to those that are 65 or older, but "people with Medicare" or "Medicare

eligible" is the preferred terminology.

1557 OCR Anti-Discrimination Notice

- The Office of Civil Rights (OCR) Section 1557 of the Affordable Care Act anti-discrimination notice and multi-language tagline should be included on all significant publications or significant communications. See this FAQ for more information.
- Recommended language: "<Agency> must comply with applicable Federal civil rights laws and not discriminate on the basis of race, color, national origin, age, disability, sex, sexual orientation, gender identity, or religion."

Inappropriate Requests for Health Status Information

- **Do not request health status information** unless required for enrollment into a plan (e.g. Chronic Condition SNP). An MA organization may not deny, limit, or condition the coverage or furnishing of benefits to individuals eligible to enroll in an MA plan offered by the organization on the basis of any factor that is related to health status, including, but not limited to the following:
    - Medical condition, including mental as well as physical illness
    - Claims experience
    - Receipt of health care
    - Medical history
    - Genetic information
    - Evidence of insurability, including conditions arising out of acts of domestic violence
    - Disability
- Ensure that any questions or other language in BRC's, plan comparisons, sales or enrollment processes or scripts, do not directly or indirectly require this information, unless necessary for enrollment in the plan.

Telephonic Script Guidance

- During telephonic sales calls agents may ask, *but not require* the beneficiary to provide information regarding their Medicare ID number, Part A or Part B effective dates, or any other demographic or health information.
- The only information an agent needs from a beneficiary in order to provide non-beneficiary specific plan information is zip code, county, and/or state.
- If the beneficiary does not wish to disclose any of this information, the agent must continue the call and provide plan information to the beneficiary.
- The agent cannot end the call if the beneficiary does not disclose this information, as this could be seen as discriminatory.

Customer Service Numbers

- Customer service numbers must be toll-free numbers.
- A TTY number must appear in conjunction with the customer service number in the same font size and style as the other phone numbers except as outlined below.

Exceptions:

- Outdoor advertising (ODA) or banner/banner-like ads
- Radio advertisements and radio sponsorships (e.g., sponsoring an hour of public radio)
- In television ads, the TTY number may be a different font size/style than other phone numbers to limit possible confusion.

Email Communications

- Must provide an opt-out process on each communication for those who wish to no longer receive email or other electronic communications.
- *Note: Text messaging and other forms of electronic direct messaging (e.g., social media platforms) would fall under unsolicited contact and are not permitted.*

Websites

- Websites must be clear and easy to navigate.
- If communicating about both current year and upcoming year plans (AEP), it must be clear to which plan year the information is referencing.
- May only require users to enter zip code, county, and/or state for access to non-beneficiary specific website content.
- Websites containing any marketing content must be submitted to CMS.

Lead Forms

- Agencies are responsible for ensuring that they are gathering and purchasing leads in a compliant manner that is consistent with Devoted Health policies and procedure, CMS guidelines, and other federal and state regulations.
- Permission to contact must be clear to the consumer that they are agreeing to give their contact information and requesting for a licensed sales agent to contact them regarding Medicare plan information.
- Agency-created websites or websites that are used by partners to obtain leads that contain lead forms need to be clear, easy to understand and navigate.
- Agencies cannot require consumers to give any health status, gender, or date of birth information to solicit for Medicare Advantage or Prescription Drug Plans.
- FDR websites must not require users to enter any information other than a zip code, county, and/or state for access to non-beneficiary specific website content.

Permission to Contact

- If a potential enrollee provides permission to be called or otherwise contacted, the contact must be event-specific, and may not be treated as open-ended permission for future contacts.
- TCPA guidelines stipulate when requesting information from a proposed member, agencies need to, at the minimum, disclose:
    - Calls may be made by auto dialer, text (if applicable) or robocall (if applicable)
    - Calls are for marketing purposes
    - Cellular carrier charges may apply
    - Providing permission does not impact eligibility to enroll or the provision of services

- Can change permission preferences at any time

Social Media

- Must submit social media (Devoted Health account) posts (e.g., Facebook, Twitter, YouTube) that meet the definition of marketing for review, and CMS filing.

Any Material that Mentions Providers

- Any communication or marketing material that mentions a provider and Devoted Health must be submitted to Devoted Health for review prior to use.
- Providers are prohibited from mailing marketing materials on behalf of the plan.
    - This includes mailers that describe general plan benefits and do not mention any particular carrier.

Nominal Gifts

- Gifts may be given to Medicare beneficiaries for marketing purposes so long as the total retail value is no more than $15 retail value, $75 aggregate, per person, per calendar year. Materials promoting/offering a gift must state that the gift is available with **no obligation to enroll**.
- Must be offered to all potential enrollees regardless of whether they enroll, and without discrimination.
- May not be in the form of cash or rebates.
- May not be items that are considered drug/health benefits (e.g., a free checkup), including optional mandatory supplemental benefits; may not be tied directly or indirectly to the provision of any other covered item or service.

Educational or Sales Materials

Materials that include invitations to educational or sales events must clearly be advertised as 'educational' or sales on the material(s) itself.

The following disclaimers need to be added:

- Sales Events: "For accommodation of persons with special needs at sales meetings call 1-800-338-6833 (TTY 711). A licensed sales agent will be on site with plan materials and enrollment applications."
- Educational Events: "For accommodation of persons with special needs at meetings call 1-800-338-6833 (TTY 711).

Prohibited Terminology/Statements

Devoted Health prohibits agencies from distributing communications that are materially inaccurate, misleading, or otherwise make misrepresentations or could confuse beneficiaries.

- Examples include:
    - Identifying a Medicare Supplement plan as a Medicare Advantage plan, etc.
    - Creating direct mail solicitations or websites that look like official government notifications.
    - Using words and/or imagery that may confuse beneficiaries or cause them to believe the advertisement is coming directly from the government. Areas of concern include:

        - Company/insurance agency/broker not prominently displayed
        - Includes the American flag or imagery such as government buildings and/or symbols
        - Overuse of red, white and blue as the color scheme with no company identification to clarify you are not affiliated with Medicare
        - Includes a company name that is similar to or includes "Medicare" or a name that may confuse consumers into believing the company is affiliated with Medicare, and does not prominently clarify that the company is a sales agency and not the government or endorsed by the government.
        - Not include disclaimers, or contains hidden or very small disclaimers, including but not limited to those to clarify the company is a sales agency and not the government or endorsed by the government.
    - Providing information about Original Medicare or Medicare plans that is inaccurate or unclear.
- Need to clearly state that the solicitation is coming from the lead generator/agency, and whom the consumer will reach if they respond.
- Must verify that all information is up-to-date, accurate and clearly described

Comparisons to Other Plans/Original Medicare

- Do not compare Devoted Health plans to other plans/Original Medicare by name (unless substantiated by a study or statistical data) and such comparisons are factually based. *Must include footnote referencing data/study.
- Comparison cannot be misleading or confusing to members.
- Do make disparaging comments about other plans/Original Medicare

References to Research or Studies

- Agencies may not make unsupported claims in advertising. If a statement is made that requires statistical support or documentation, current and accurate sources must be cited. Ensure that citations are either built into the text or referenced by footnote and include the date and source of the study or research.
- Agencies may not make superlative statements such as "the best" or "highest ranked" or "number one" unless these statements can be validated. If you can't support it, you can't state it.
    - If a "highly rated" statement is used, need to include the following substantiation language, *"XX% of the plans offered through <Agency> are highly rated. Highly rated is considered 4 and above out of 5 stars. Medicare evaluates plans based on a 5-Star rating system. Star Ratings are calculated each year and may change from one year to the next."*

Claims of Endorsement

Do not make claims that Devoted Health or Devoted Health plans are recommended or endorsed by the Center of Medicare & Medicaid Services (CMS), or the Department of Health & Human Services (DHHS).

"Partnership" or "Alliance"

Avoid words like "partnership" or "alliance" in reference to the relationship between Devoted Health and the agency/agent or Devoted Health and a vendor.

Endorsements / Testimonials

If member testimonials are used, must use actual members who are currently active in the plan they are endorsing. Testimonials must also include the name of the plan in which the member is enrolled ("Devoted Health"). Must add required disclaimer language: "Real Devoted Health Member." (only the first time we "see" the member if they appear multiple times, such as in a TV ad).

- Ensure member has given consent for quote to be used in the particular medium, such as on a website.
- If an individual is paid to endorse or promote the plan or product, this must be clearly stated (e.g., "paid endorsement")
- If an individual, such as an actor, is paid to portray a real or fictitious situation, the ad must clearly state it is a "Paid Actor Portrayal."
- Any endorsement or testimonial that is made by a healthcare provider (even if another individual quotes the provider) must be discussed with and reviewed by Devoted Health prior to use. Provider can not be paid or compensated for testimonial in any way.
- Any claim made in an endorsement or testimonial must be substantiated.
- An endorsement or testimonial cannot use negative testimonials about other Plans/Part D Sponsors.

Language Rules & Restrictions

Plan Marketing Name

Devoted Health has formally filed the name "**Devoted Health**" with CMS. This means all materials must use "Devoted Health" and NOT a shortened version of our Marketing Name (i.e. "Devoted")

Correct Terminology to Describe Agents

Acceptable to use the terms:

- **Licensed Sales Agent**
- **Licensed Sales Representative**
    - *Note: "Medicare Expert" may not be used as it can be misleading, implying the agent may have additional knowledge/skill above licensing requirements that can't be verified. Using the word Medicare in the title may also make it seem as if we're endorsed by Medicare***.**
- If an agent's phone number or one that will route to sales is included, must clearly indicate before the number that it will direct callers to a "licensed sales agent".

Superlatives and Absolute Language

- Do not use unsubstantiated absolute or qualified superlative language, such as "best", "greatest," "#1" or "outstanding".
- Do not use absolute language such as "guarantee" or "promise" (these are only examples)

Describing Medicare

- When comparing Original Medicare to MAPD, must be more specific than just "Medicare". It is preferable to describe as "Medicare Part A and Part B." Can also use the term "Original Medicare."

Use of the word "Free"

- When describing gifts/services like, "Free Medicare Plan Comparison", need to include "no obligation to enroll" language. (At a minimum disclaimer language is needed.)
- It is preferred to have this language in proximity to the FREE reference. If there are space issues, may use an asterisk with the language notated at the bottom in a footnote.
- Do not use the term "free" to describe a zero dollar premium, reduction in premiums (including Part B buy-down), reduction in deductibles or cost-sharing, low-income subsidy (LIS), or cost sharing for individuals with dual eligibility.
    - *It is only permissible to use the term "free" with respect to plan benefits when describing mandatory, supplemental, and preventive benefits provided at a zero-dollar cost sharing for all members.*

Use of Qualifying Language

- Do not use declarative phrases like, "You will save thousands of dollars", "This is the best plan for you"
- Instead use phrases like "you **may** be able to save money"(if accurate)
- Use other words such as "eligible" or "you might", "you may" "you could potentially save", "should" or "maybe " (if accurate)

Words to avoid

- Entitled (can only be used when discussing Original Medicare)
- Any Affordable Care Act reference

Acceptable Words and Terms to use at the end of AEP

Approved phrases to communicate the end of AEP that doesn't create false sense of urgency:

- Don't delay
- Enroll now
- Now's the time
- The time is now
- Don't Miss Out
- Get the answers you need
- AEP is ending soon (may only be used within 2 weeks of 12/7)
- AEP ends on 12/7

Scare and High-Pressure Tactics

- Avoid using language to create undue fear or anxiety in members/prospects, such as "beware of some plans whose copays could bust your budget", etc.
- Avoid words that would cause a false sense of urgency, such as "Act now, or you may lose your benefits!" etc.

- Avoid repetitive phrases, certain font/colors, and/or punctuation that may communicate this to a potential enrollee.
    - Examples may include **"URGENT!!!"** used on a material with font that is in all caps, oversized and red.

General Election Period Requirements

When submitting materials in HPMS, please indicate the selling period(s) that the material will be used in the marketplace.

Annual Election Period (AEP)

- In order to ensure that beneficiaries are not misled or confused about Original Medicare open enrollment versus MA/PDP fall open enrollment and the new January – March Open Enrollment Period (OEP), the following term should be used when describing AEP: "Annual Enrollment Period" or "Medicare Annual Election Period."
- It must be clear in the context of the piece as a whole that the piece is referring to the AEP when a person can enroll in a Medicare Advantage or Prescription Drug Plan.

Open Enrollment Period (OEP)

Agencies are prohibited from knowingly targeting or sending unsolicited marketing materials to any MA enrollee or Part D enrollee during the continuous Open Enrollment Period (OEP) (January 1 to March 31). Be careful in not appearing to be marketing during OEP. "Switching" language must not be used during the OEP. Specifically calling out the OEP, or outlining the options a member has during the Open Enrollment Period would likely be considered marketing the OEP by CMS. Any materials used during OEP that only focus on the ability to switch - instead of focusing on the ability to enroll through the use of ICEP and other SEP's, would not be allowed.

During the OEP, agency partners/agents may:

- Conduct marketing activities that focus on other enrollment opportunities including but not limited to:
    - Marketing to age-ins (who have not yet made an enrollment decision);
    - 5-star plans marketing the continuous enrollment SEP; and
    - Marketing to dual-eligible and LIS beneficiaries who, in general may make changes once per calendar quarter during the first nine months of the year.
- Send marketing materials when a beneficiary makes a proactive request;

- At the beneficiary's request, have one-on-one meetings with a sales agent;
- At the beneficiary's request, provide information on the OEP through the call center.

During the OEP, agency partners/agents may not:

- Send unsolicited materials advertising the ability/opportunity to make an additional enrollment change or referencing the OEP;
- Specifically target beneficiaries who are in the OEP because they made a choice during Annual Enrollment Period (AEP) by purchase of mailing lists or other means of identification;
- Engage in or promote agent/broker activities that intend to target the OEP as an opportunity to make further sales;
- Call or otherwise contact former enrollees who have selected a new plan during the AEP.

It is important to consider the intent of any material prior to including information about the OEP.

- Materials that specifically call out the OEP, or outline the options a member has during the Open Enrollment Period would likely be considered marketing the OEP by CMS.
- If creating advertisements that will be used during OEP, necessary qualifiers must be included that speak to those who may be aging in, new to Medicare, losing coverage, or other SEP qualifying event, so as not to violate the prohibition of knowingly targeting or sending unsolicited marketing material during the Open Enrollment Period (OEP).

(April 1 - September 30) - Rest of Year (ROY) and Special Election Periods (SEP)

Agencies cannot market for an upcoming plan year prior to October 1. When marketing Medicare plans outside of AEP to the general public, only a small percentage of members/prospects will be aging-in, recently moved, or have other SEP qualifying conditions. Accordingly, be careful not to mislead members/prospects into believing they could change their respective plans outside of AEP.

- When marketing during ROY, materials **must** include language clarifying that a prospect may "call to see if they qualify" or that they may "apply, choose or enroll" in a plan only if they are eligible via an SEP. Materials that discuss a beneficiary's enrollment eligibility need to be clear that the piece is describing eligibility for a Special Election Period, or to "enroll in the plan".
- Marketing materials that appear to be marketing towards the general public and include a call to action such as "Call now to get the benefits you deserve" could be considered misleading and may be opted out of by Devoted Health.
- If creating advertisements that will be used during ROY, must include on the materials:
    - Necessary qualifiers that speak to those who may be aging in, new to Medicare, losing coverage, or other SEP qualifying event; OR
    - If the qualifier is not clearly stated within the marketing material, the call to action must be that they are calling to see if they are eligible to enroll, call to learn more, or call to see if you qualify for a special election period.
    - A disclaimer explaining that: "Enrollment in the described plan type may be limited to certain times of the year unless you qualify for a Special Enrollment Period."

Marketing New Markets / New Plans

In new markets/areas where Devoted Health is introducing Medicare Advantage plans for the first time, marketing may begin on 10/1.

References

- Centers for Medicare and Medicaid Services (CMS), Title 42 of the Code of Federal Regulations (CFR) §§ 422.2260, 422.2261, 422.2262, 422.2263, 422.2264 and 422.2274
- Office of Civil Rights (OCR) Section 1557 of the Affordable Care Act
- Centers for Medicare and Medicaid Services (CMS), Chapter 2 of the Medicare Managed Care Manual, Section 30