

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Center for Medicare
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MEDICARE DRUG & HEALTH PLAN CONTRACT ADMINISTRATION GROUP

DATE: May 10, 2023

TO: Medicare Advantage Organizations, Medicare Advantage-Prescription Drug Plans, Prescription Drug Plan Sponsors, and Section 1876 Cost Plans

FROM: Kathryn A. Coleman
Director

SUBJECT: Definition of Marketing

In order to ensure Medicare beneficiaries are making enrollment decisions based on up-to-date and accurate information, the Centers for Medicare & Medicaid Services (CMS) is issuing this memo to clarify the definition of marketing for Medicare Advantage-Prescription Drug Plans, stand-alone Prescription Drug Plans, 1876 Cost Plans, and Third-Party Marketing Organizations (TPMOs).

Regulations at 42 CFR §§ 422.2260 and 423.2260 define marketing as communication materials and activities which meet specific intent and content standards. The *intent* component of the definition of “marketing” is met when any material or activity is intended to draw a beneficiary's attention to plan or plans, influence a beneficiary's decision-making process when selecting a plan, or influence a beneficiary's decision to stay enrolled in a plan (that is, retention-based marketing). The *content* component of the definition of “marketing” is met when any material or activity includes or addresses plan benefits, benefits structure, premiums, or cost sharing; measuring or ranking standards; or rewards and incentives.

To date, CMS has permitted the mentioning of widely available benefits (i.e., vision, dental, premium reduction, and hearing) in materials or activities without those materials or activities being considered marketing subject to the marketing regulations. We did not believe the general descriptions were made with sufficient intent to draw attention to a particular plan or subset of plans. This interpretation was predicated on the assumption that a beneficiary would be unlikely to make an enrollment decision based on widely offered benefits advertised without information on the associated costs for enrollees. CMS monitors both organization and TPMO marketing by reviewing marketing and communication materials and activities, reviewing complaints received through 1-800-Medicare, and listening to marketing and enrollment calls. Due primarily to the recent proliferation of TPMO advertising, we have found, however, through our surveillance, reviews, and discussions with interested parties that many beneficiaries do inquire and some enroll based on the original advertisement of these types of benefits. Beneficiaries have contacted agents, made calls to 1-800 numbers, and responded to flyers asking about the dental, vision, hearing, and cost-savings being marketed. Therefore, we are expanding our interpretation of the regulatory definition of “marketing” to include content that mentions any type of benefit

covered by the plan and is intended to draw a beneficiary's attention to plan or plans, influence a beneficiary's decision-making process when selecting a plan, or influence a beneficiary's decision to stay enrolled in a plan (that is, retention-based marketing) and thus subject to review. As stated above, marketing requires both intent and content. Content that beneficiaries can receive benefits such as dental, vision, cost-savings, and/or hearing services is sufficient information about plan benefits, benefits structure or cost sharing to meet the content standard in the definition of marketing in §§ 422.2260 and 423.2260. Further, the use of these statements in advertisements and activities directed to Medicare beneficiaries clearly meets the intent standard. Therefore, beginning **July 10, 2023**, any material or activity that is distributed via any means (e.g., mailing, television, social media, etc.) that mentions any benefit will be considered marketing and must be submitted into HPMS. This clarification, along with the new marketing safeguards codified in the Contract Year 2024 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, Medicare Cost Plan Program, and Programs of All-Inclusive Care for the Elderly final rule (CMS-4201-F), will help ensure that beneficiaries have accurate information when shopping for Medicare coverage and are protected from potentially misleading marketing activities.

Questions may be sent to marketing@cms.hhs.gov. Please copy your Marketing Reviewer.