

**Marketing Activities Guidance for Agents  
August 2014**

**I. REGULATORY BACKGROUND**

42 CFR 423.2268 provides that a plan may not:

- Provide cash or other remuneration as an inducement for enrollment or otherwise.
- Offer gifts to potential enrollees, unless the gifts are of nominal value, are offered to all potential enrollees without regard to whether or not the beneficiary enrolls, and are not in the form of cash or other monetary rebates.
- Engage in any discriminatory activity such as, for example, attempts to recruit Medicare beneficiaries from higher income areas without making comparable efforts to enroll Medicare beneficiaries from lower income areas.
- Solicit door-to-door for Medicare beneficiaries or through other unsolicited means of direct contact, including calling a beneficiary without the beneficiary initiating the contact.
- Engage in activities that could mislead or confuse Medicare beneficiaries, or misrepresent the Part D sponsor or its Part D plan. The Part D organization may not claim that it is recommended or endorsed by CMS or Medicare or that CMS or Medicare recommends that the beneficiary enroll in the Part D plan. The Part D organization may explain that the organization is approved for participation in Medicare.
- Market non-health care related products to prospective enrollees during any Part D sales activity or presentation. This is considered cross-selling and is prohibited.
- Market any health care related product during a marketing appointment beyond the scope agreed upon by the beneficiary, and documented by the plan, prior to the appointment.
- Market additional health related lines of plan business not identified prior to an in-home appointment without a separate scope of appointment identifying the additional lines of business to be discussed.
- Conduct sales presentations or distribute and accept Part D plan enrollment forms in provider offices, pharmacies or other areas where health care is delivered to individuals, except in the case where such activities are conducted in common areas in health care settings.
- Conduct sales presentations or distribute and accept plan applications at educational events.
- Provide meals for potential enrollees, which are prohibited, regardless of value.

NOTE: Marketing for an upcoming plan year may not occur prior to October 1. Current year marketing activities to existing beneficiaries must cease once marketing for the new plan year begins. Prior year materials may be provided upon request and enrollment applications may be processed.

**II. PROMOTIONAL ACTIVITIES**

A. General Rules

Promotional activities are those designed to attract the attention of prospective members and/or encourage retention of current members. The following general rules apply to any promotional activities or items:

- If it involves a gift, must be of nominal value based on the fair market value of the item (see Section B. below)

- Must be offered to all people regardless of enrollment and without discrimination;
- Must not be items that are considered a health benefit, (e.g., a free checkup);
- Must not consist of lowering or waiving co-pays;
- Must not be used or included with the SB, ANOC/EOC;
- Must not inappropriately influence the beneficiary's selection of a provider, practitioner, or supplier of any item or service.
- Must be tracked and documented during the contract year for current members; and
- Must not be tied directly or indirectly to the provision of any other covered item or service.

#### B. Gifts of Nominal Value

Gifts are generally offered to potential enrollees and must be: (i) of nominal value; and (ii) provided regardless of whether the individual enrolls in the plan.

Nominal value is defined as an individual item/service worth no more than \$15 (based on the fair market value of the item), with an aggregate of \$50 per person per year. Items given to current members must be tracked and documented. There is no requirement to track pre-enrollment promotional items on a per person basis; however, pre-enrollment activities may not be deliberately structured with the intent to give people more than \$50 per year.

The following rules must be followed when providing gifts:

- If a nominal gift is one large gift that is enjoyed by all in attendance (e.g., a concert, raffle drawing), the total fair market value must be nominal per person (i.e. be worth \$15 or less when it is divided by the estimated attendance). For planning purposes, anticipated attendance may be used, but must be based on venue size, response rate, or advertisement circulation.
- Nominal gifts may not be in the form of cash or other monetary rebates. Cash gifts are prohibited even if their worth is less than \$15. Cash gifts include charitable contributions made on behalf of potential enrollees, and those gift certificates and gift cards that can be readily converted to cash, regardless of dollar amount.

### **III. REFERRAL PROGRAMS**

Referral programs are activities or programs to solicit leads from existing members for new enrollees. These include gifts to thank members for devoting time to encourage enrollment. The following general rules apply:

- Gifts for referrals must be available to all members that provide a referral and cannot be conditioned on actual enrollment of the person being referred.
- A plan sponsor can ask for referrals from members, including names and mailing addresses, but cannot request phone numbers and email addresses. Plan sponsors may use member provided referral names and mailing addresses to solicit potential new members by conventional mail only.
- Any solicitation for leads, including letters sent from plan sponsors to members, cannot announce that a gift will be offered for a referral.

- Gifts must be of nominal value

#### IV. UNSOLICITED CONTACTS

##### A. General Rules

Marketing through unsolicited direct contacts is prohibited. This includes:

- Door to door solicitation (including leaving information such as a leaflet, flyer, or door hanger at a residence, or leaving information such as a leaflet or flyer on someone's car). Agents/brokers who have a pre-scheduled appointment which becomes a "no-show" may leave information at the no-show beneficiary's/individual's residence
- Approaching beneficiaries in common areas (i.e., parking lots, hallways, lobbies, sidewalks, etc.) and
- Unsolicited telephone or unsolicited email or social media contact including leaving electronic voicemail messages or text messaging.

The prohibition on unsolicited contacts does not apply to conventional mail and other print media (such as direct mail and advertising), provided these are done in accordance with the CMS Marketing Guidelines. Permission given to be called or otherwise contacted must be event-specific, and may not be treated as open-ended permission for future contacts.

##### B. Rules for Email and Social Media

Emails are a form of direct contact. It is not permissible to:

- initiate e-mails to a beneficiary, unless the beneficiary has agreed to receive those e-mails.
- rent or purchase email lists to distribute plan information.
- send electronic communications or email individuals at an email address obtained through friends or referrals .

Enrollees must be provided an opt-out process they can use if they no longer wish to receive e-mail communications.

Responding to a question or statement initiated by the beneficiary is permitted, but the response should not address subjects beyond the scope of the question or statement.

If an individual comments, likes or follows a Part D Sponsor on social media, it does not constitute agreement to receive communications outside of the public forum. Initiating separate communications to specific social media users is not allowed.

##### C. Rules for Telephonic Contact

Agents may contact their own clients at any time to discuss plan business. Agents may not engage in the following:

- Bait-and-switch strategies - making unsolicited calls about other business as a means of generating leads for Medicare plans.
- Calls based on referrals. If an individual would like to refer a friend or relative to an agent, the agent may provide contact information such as a business card that the individual may give to the friend or family member. In all cases, a referred individual needs to contact the plan or agent/broker directly.
- Calls to former members who have disenrolled, or to current members who are in the process of voluntarily disenrolling to market plans or products (except as permitted below). Members who are voluntarily disenrolling from a plan should not be contacted for sales purposes or be asked to consent in any format to further sales contacts.
- Calls to beneficiaries who attended a sales event, unless the beneficiary gave express permission at the event for a follow-up call (including documentation of permission to be contacted, which must be maintained).
- Calls to beneficiaries to confirm receipt of mailed information (except as permitted below).

Agents may do the following:

- Call individuals who have expressly given permission for a sales agent to contact them, for example, by filling out a business reply card (BRC) or asking a customer service representative (CSR) to have an agent contact them. This permission applies only to the entity from which the individual requested contact, for the duration of that transaction, for the scope of product, (e.g., MA-PD plan or PDP), previously discussed or indicated in the reply card.
- Return phone calls or messages, as these are not unsolicited.
- Contact their members via an automated telephone notification to inform them about general information such as the AEP dates, availability of flu shots, upcoming plan changes, and other important information.

Federal Trade Commission's Requirements for Sellers and Telemarketers apply to telephone contacts, including:

- Federal Communications Commission rules and applicable State law
- National-Do-Not-Call Registry
- "Do not call again" requests, and
- Federal and State calling hours

## **V. EDUCATIONAL EVENTS**

An educational event is an event designed to inform Medicare beneficiaries about Medicare Advantage, Part D or other Medicare programs and does not include marketing, (i.e., the event sponsor does not steer, or attempt to steer, potential enrollees toward a specific plan or limited number of plans).

The following rules apply to educational events:

- may be hosted by the plan sponsor or an outside entity and are held in a public venue. These events cannot be held at in-home or one-on-one settings.
- may not include any sales activities such as the distribution of marketing materials or the distribution or collection of plan applications.
- must be explicitly advertised as “educational,” otherwise, they will be considered by CMS as sales/marketing events.
- Materials distributed or made available at a prospective enrollee event must be free of plan-specific information, (including plan-specific premiums, co-payments, or contact information), and any bias toward one plan type over another. The following are examples of acceptable materials and activities at an educational event:
  - A banner with the plan name and/or logo displayed.
  - Promotional items, including those with plan name, logo, and toll-free customer service number and/or website. Promotional items must be free of benefit information and consistent with CMS’ definition of nominal gift.
  - Respond to questions asked at an educational event.
- At educational events, it is not permissible to:
  - Discuss plan-specific premiums and/or benefits.
  - Distribute plan specific materials.
  - Distribute or display business reply cards, scope of appointment forms, enrollment forms, or sign-up sheets.
  - Set up individual sales appointments or get permission for an outbound call to the beneficiary.
  - Attach business cards or plan/agent contact information to educational materials, unless requested by the beneficiary.
  - Advertise an educational event and then have a marketing/sales event immediately following in the same general location, (e.g., same hotel).
  - If the event is for members only, no enrollment or sales activities may be conducted at the event. However, plan specific premiums and/or benefits may be discussed and plan specific materials may be distributed to enrollees. Educational events must be advertised as such. In this context (i.e. enrollee-only event), the discussion of benefits is not considered a sales activity at events for existing enrollees only. Additionally, any marketing of the event must be done in a way that reasonably targets only existing members, (e.g., direct mail flyers), and not the mass marketplace, (e.g., radio or newspaper ad).

It is permissible to provide education at a sales or marketing event, but not to market or sell at an educational event.

## **VI. SALES/MARKETING EVENTS**

### **A. General Rules**

Marketing/sales events are events designed to steer, or attempt to steer, potential enrollees toward a plan or limited set of plans. At marketing/sales events, plan representatives may discuss plan specific information and collect applications.

There are two main types of marketing/sales events – formal and informal:

1. Formal marketing/sales events are typically structured in an audience/presenter style with a sales person or plan representative formally providing specific plan sponsor information via a presentation on the products being offered.
2. Informal marketing/sales events are conducted with a less structured presentation or in a less formal environment. They typically utilize a table, kiosk or a recreational vehicle (RV) that is manned by a plan sponsor representative who can discuss the merits of the plan's products. All sales scripts and presentations must be submitted to CMS for approval prior to their use during the marketing/sales event.

The following is not permitted at a marketing/sales event:

- Conducting health screening or other like activities that could give the impression of “cherry picking.”
- Requiring beneficiaries to provide any contact information as a prerequisite for attending the event. This includes requiring an email address or any other contact information as a condition to RSVP for an event online or through mail. Any sign-in sheets should state clearly that completion of any contact information is optional.
- Use personal contact information obtained to notify individuals of raffle or drawing winnings for any other purpose.

### **B. Notifying CMS of Scheduled Marketing Events**

Plan sponsors must notify CMS of all formal and informal marketing/sales events via HPMS prior to advertising the event or seven (7) calendar days prior to the event's scheduled date, whichever is earlier. Changes to marketing/sales events, (e.g., cancellations and room changes), should be updated in HPMS at least forty-eight (48) hours prior to the scheduled event.

### **C. Cancellations**

The agent should email [producersalesresource@caremark.com](mailto:producersalesresource@caremark.com) as soon as a sales event cancellation is determined. Cancellations of sales events will then be entered by SilverScript as soon as possible in the HPMS Marketing Module Cancel Event function. The plan's regional office must be notified if a sales event is cancelled.

If a sales event is canceled before its originally scheduled date and time, the Plan/Part D Sponsor must cancel the event in HPMS, more than forty-eight (48) hours prior to the originally scheduled date and time of the event, whenever possible.

## **VII. PERSONAL/INDIVIDUAL MARKETING APPOINTMENTS**

### **A. General Rules**

Personal/individual marketing appointments typically take place in the beneficiary's home; however, these appointments can also take place in other venues such as a library or coffee shop. Appointments must follow the scope of appointment guidance. All one-on-one appointments with beneficiaries are considered sales/marketing events.

The plan sponsor's representative may not do the following:

- Discuss plan options that were NOT agreed to by the beneficiary.
  
- Market non-health care related products (such as annuities or life insurance).
  
- Ask a beneficiary for referrals.
  
- Solicit/accept an enrollment request (application) for a January 1st effective date prior to the start of the Annual Enrollment Period (AEP) unless the beneficiary is entitled to another enrollment period.

### **B. Scope of Appointment Documentation**

In conducting marketing activities, an agent may not market any health care related product during a marketing appointment beyond the scope agreed upon by the beneficiary before the meeting with that individual. The agent must document the scope of the appointment prior to the appointment (48-hours in advance when practicable). If an agent would like to discuss additional products during the appointment that the beneficiary did not agree to discuss in advance, they must document it 48-hours in advance, when practicable. If it is not practicable and the beneficiary requests to discuss other products, the Plan/Part D Sponsor must document a second scope of appointment for the additional product type to continue the marketing appointment. Marketing/sales events do not require documentation of beneficiary agreement.

To further clarify the requirements around documentation:

- SilverScript requires that field agents provide the documentation in writing, in the form of a signed agreement by the beneficiary. A variety of technological means may be used to fulfill the scope of appointment requirement, including conference calls, fax machines, designated recording line, pre-paid envelopes, and e-mail. The Scope of Appointment document should include the following:
  - Product type (e.g. MA, PDP) that the beneficiary has agreed to discuss,
  - Date of appointment,
  - Beneficiary contact information (e.g. name, address, telephone number),
  - Signature (e.g. beneficiary or authorized representative),
  - The type of product the beneficiary agreed to discuss during the appointment,
  - Method of contact (e.g. walk-in),
  - Agent information (name, contact information) and signature,
  - A statement that beneficiary is not obligated to enroll in a plan; their current or future Medicare enrollment status will not be impacted and clearly explain that the beneficiary is not automatically enrolled in the plan(s) discussed,
  - If the document was not signed prior to the appointment, include an explanation why it was not completed.
  
- A beneficiary may set a scope of appointment at a marketing/sales event for a future appointment.

- In instances where a beneficiary visits a plan or an agent/broker office on his/her own accord, the plan sponsor or agent/broker must document the scope of appointment prior to discussing MA, PDP, or cost plans

Note: All business reply cards (BRC) used for documenting beneficiary scope of appointment or agreement to be contacted must be submitted to CMS for review and approval. The BRC should include a statement informing the beneficiary that a sales person may call as a result of their returning a BRC.

#### **VIII. MARKETING IN A PROVIDER SETTING**

The following general rules apply in a provider setting:

- Sales activities may not be conducted in healthcare settings except in common areas. 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 area 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.
- Agents are prohibited from conducting sales presentations, distributing and accepting enrollment applications, and soliciting Medicare beneficiaries in areas where patients primarily intend to receive health care services or are waiting to receive health care services. These restricted areas generally include, but are not limited to, waiting rooms, exam rooms, hospital patient rooms, dialysis center treatment areas (where patients interact with their clinical team and receive treatment), and pharmacy counter areas (where patients interact with pharmacy providers and obtain medications). The prohibition against conducting marketing activities in health care settings extends to activities planned in health care settings outside of normal business hours.
- Agents are only permitted to schedule appointments with beneficiaries residing in long-term care facilities (including nursing homes, assisted living facilities, board and care homes, etc.) upon request by the beneficiary.