

IX. Marketing Guidelines

The Centers for Medicare & Medicaid Services (CMS) issues Marketing Guidelines for Prescription Drug Plans (PDPs) and Medicare Advantage Prescription Drug Plans (MA-PDs) (<http://www.cms.hhs.gov/PrescriptionDrugCovContra/Downloads/FinalMarketingGuidelines.pdf>). Providers, including all entities that contract with a plan such as pharmacies, must also follow a set of Marketing Guidelines. It is important for SHIPs and Medicare beneficiaries to be able to recognize activities or behaviors that do not meet the Marketing Guidelines. Please refer to the chart below, “Medicare Drug Plans: Marketing Activities” for a summary of the Marketing Guidelines.

If a SHIP counselor or a beneficiary believes that a plan or provider is not following the guidelines, he can report such activities to either the Senior Medicare Patrol (SMP) program in his state (www.smpresource.org) or to the Department of Health and Human Services Consumer Complaint/Fraud/Referral Helpline (1-800-HHS-TIPS or 1-800-447-8477).

For Example: Mr. Smith resides in a nursing home. For the past two years, he has been enrolled in a PDP, “The Gold Standard.” Because his prescription drug needs have changed rather significantly over the past six months, he would like to review other PDP options available to him for 2008. In late November, he attends a presentation by a PDP representative in the dining room of his nursing home. Because the plan’s formulary includes some of the new medications that he is taking, he invites the representative to speak with him in his own room. The next afternoon, the representative meets with Mr. Smith in his room and continues to educate him about the plan.





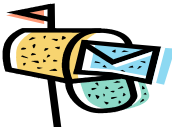
This is an example of an **acceptable** marketing practice. Because Mr. Smith requested the plan representative to further educate him in his room, the representative is not engaging in any improper conduct. However, if the plan representative had suggested to Mr. Smith that they continue their conversation in his private room, the representative would not have been following the Marketing Guidelines.




For Example: Mrs. Johnson is currently enrolled in a PDP. However, she would like to learn more about the benefits of enrolling in an MA-PD plan. In October, she visits her doctor, Dr. Peters, with whom she has a longstanding and trusting relationship. She asks him for his advice. Although he tells her about all of the MA-PD plans in which he participates, he strongly encourages her to enroll in the “Best Care” plan and provides her with an enrollment application.

This is an example of **unacceptable** marketing practices. Dr. Peters is not allowed to advocate for any particular plan or distribute MA-PD enrollment applications. He can, however, provide Mrs. Johnson with information about the plans that he contracts with and educate her patients on what kind(s) of plan(s) would be best for her.

Medicare Drug Coverage: Marketing Activities*

Medicare Drug Plans

	YES 	NO 
<p>Telephone</p> 	<ul style="list-style-type: none"> <input type="checkbox"/> Enroll people by phone only if the beneficiary has called the plan with the explicit intention of enrolling; <input type="checkbox"/> Call their members; <input type="checkbox"/> Call people former enrollees in the plan for up to 18 months after they have disenrolled; <input type="checkbox"/> Contact individuals who have provided their phone numbers (i.e. at a sales event) for up to 3 months after the phone number was collected; <input type="checkbox"/> 1-2 follow-up calls are permitted if plans do not reach potential enrollees the first time. 	<ul style="list-style-type: none"> <input type="checkbox"/> Enroll beneficiaries over the phone during a solicitation call; <input type="checkbox"/> Request or collect credit card numbers or bank account information, Social Security number, or Medicare number for any purpose during an enrollment call; <input type="checkbox"/> Market or enroll other lines of business during an enrollment call; <input type="checkbox"/> Call people on national and state “do not call” lists or those who specifically requested not to be called again; <input type="checkbox"/> After third attempt, even if enrollee is not reached, plan cannot call again for 6 months.
<p>Online/Email</p> 	<ul style="list-style-type: none"> <input type="checkbox"/> Enroll beneficiaries online; <input type="checkbox"/> Send emails to beneficiaries when they have requested further information. 	<ul style="list-style-type: none"> <input type="checkbox"/> Send unsolicited emails.
<p>Direct Mail</p> 	<ul style="list-style-type: none"> <input type="checkbox"/> Send direct mail to potential enrollees. 	<ul style="list-style-type: none"> <input type="checkbox"/> Must cease sending mail to potential beneficiary for 6 months if he/she does not respond after three attempts by the Plan.



<p>Home Visit</p> 	<ul style="list-style-type: none"> <input type="checkbox"/> Come to a potential enrollee’s home only if the plan has been invited or to make a home visit. 	<ul style="list-style-type: none"> <input type="checkbox"/> Initiate home visits, only responding to requests for them; <input type="checkbox"/> Imply that some plan information can only be distributed at home; <input type="checkbox"/> Solicit members or market door-to-door.
<p>Sales Presentation: Healthcare Setting</p> 	<ul style="list-style-type: none"> <input type="checkbox"/> Distribute & accept enrollment applications; <input type="checkbox"/> Conduct sales presentations in common areas, e.g. hospital/nursing home waiting rooms, cafeterias; <input type="checkbox"/> Schedule appointments with beneficiaries upon their request; <input type="checkbox"/> Literature advertising sales presentations with the intent to invite beneficiaries to a group presentation aimed at enrolling individuals in a plan must include this specific language: “A sales representative will be present with information and applications.” “For accommodation of persons with special needs at sales meetings, call <insert phone and TTY/TTD numbers.>” 	<ul style="list-style-type: none"> <input type="checkbox"/> Mislead or pressure potential enrollees into participation in any of the permissible activities or into enrollment; <input type="checkbox"/> Conduct any of the permitted activities in areas primarily designated for healthcare services, e.g.: waiting rooms, exam rooms, hospital rooms, and pharmacy counters; <input type="checkbox"/> Conduct any of the permitted activities in private areas (e.g. beneficiary’s room or home) without express request from an individual.
<p>All</p> 	<ul style="list-style-type: none"> <input type="checkbox"/> Provide gifts or prizes worth \$15 dollars or less (retail purchase price of the item) EXCEPTION: A plan may provide a prize worth more than \$15 if the prize is offered to the general public and not just to Medicare beneficiaries; <input type="checkbox"/> Post-enrollment promotional activities, including those intended to retain members, must be of nominal value and must be offered to all eligible members; <input type="checkbox"/> Use the word “Medicare” in the plan name as long as it follows the plan name; <input type="checkbox"/> Say the plan is contracted with Medicare to provide prescription drug benefits or that the plan is a Medicare-approved MA-PD/PDP. NOTE: Organizations may use the term “Medicare 	<ul style="list-style-type: none"> <input type="checkbox"/> Offer gifts or prizes worth more than \$15. Cash gifts, including charitable donations and gift certificates that can be exchanged for cash, are prohibited. If more than one item is offered at an event, the combined value of all items offered to a participant must not exceed \$15; <input type="checkbox"/> Offer post-enrollment bonuses or promotions that in any way rewards beneficiaries for using the plan’s services; <input type="checkbox"/> No post-enrollment promotional activities can offer cash or other monetary rebates; <input type="checkbox"/> Include the term “Medicare Endorsed,” suggest that the plan is a Medicare preferred plan, or suggest the caller is calling on behalf or from Medicare; <input type="checkbox"/> Compare their plan to another plan by name in any

	<p>Approved” to describe benefits and services within their marketing materials;</p> <ul style="list-style-type: none"> ❑ If a Medigap issuer sponsors a plan, it can use existing enrollment information from its Medigap plans to market its Part D plan. <p>NOTE: In doing so, issuer must market to all members not just a subset.</p> <ul style="list-style-type: none"> ❑ Descriptions of additional services must include the following language: “The products and services described below are neither offered nor guaranteed under our contract with the Medicare program. In addition, they are not subject to the Medicare appeals process. Any disputes regarding these products and services may be subject to the <Name of Plan> grievance process.” ❑ Marketing materials that include co-branding network providers’ names and/or logos must include the following language: “<Other Pharmacies, Physicians, and Providers are available in our network.” 	<p>advertising materials;</p> <ul style="list-style-type: none"> ❑ Use information obtained from a beneficiary to market non health-related products or services without written consent; ❑ Advertise outside defined service area; <p>NOTE: Some exceptions are made for unavoidable circumstances. In these cases, plans are required to clearly disclose their service area.</p> <ul style="list-style-type: none"> ❑ Discriminate based on race, ethnicity, religion, gender, sexual orientation, health status, or geographic location within a plan’s service area, e.g. target beneficiaries in higher income areas or implying certain plans are only for seniors and not for all beneficiaries. ❑ Display the names and/or logos of co-branding network providers on the organization’s member identification card; <p>EXCEPTION: Names and/or logos of co-branding partners that are State Pharmaceutical Assistance Programs (SPAPs) and non provider entities maybe displayed.</p>
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* Source: Center for Medicare & Medicare Services, “CMS Medicare Marketing Guidelines for MA, MA-PD, PDPs, and 1876 Cost Plans,” July 25, 2006 (<http://www.cms.hhs.gov/PrescriptionDrugCovContra/Downloads/FinalMarketingGuidelines.pdf>)

Medicare Drug Coverage: Marketing Activities*

Providers**

YES 	NO 
<ul style="list-style-type: none"> <input type="checkbox"/> Distribute and/or make available plan marketing materials NOTE: Providers must inform individuals where they can obtain information on all available options (i.e., 1-800-MEDICARE or medicare.gov); <input type="checkbox"/> Display different posters for different plans; <input type="checkbox"/> Make available PDP applications NOTE: Providers cannot make MA or MA-PD applications available; <input type="checkbox"/> Provide patients with information about plans' benefits NOTE: Printed information comparing the benefits of different plans must include materials from all the plans with whom they contract. <input type="checkbox"/> Educate patients on what kind(s) of plan(s) would be best for them; <input type="checkbox"/> Allow plan presentations in common spaces of their place of business; <input type="checkbox"/> Share the names of plans with which they contract and/or participate; <input type="checkbox"/> Inform patients about & assist them in applying for the low-income subsidy; <input type="checkbox"/> Discuss specific plan formularies based on patients' specific needs; <input type="checkbox"/> Provide impartial information about certain plans— such as covered benefits, cost sharing, and utilization management tools; <input type="checkbox"/> Print out and share information with patients from CMS's website; <input type="checkbox"/> Use comparative marketing materials comparing plan information created by a non-benefit/service providing third-party. 	<ul style="list-style-type: none"> <input type="checkbox"/> Accept enrollment applications; <input type="checkbox"/> Rank, order, or highlight any of the plans they discuss; <input type="checkbox"/> Advocate for any particular plan or group of plans; <input type="checkbox"/> Distribute MA-PD (or MA) enrollment applications; <input type="checkbox"/> Allow a Plan sales presentation in any space where healthcare services are provided; <input type="checkbox"/> Offer inducements to persuade beneficiaries to enroll in a particular plan or organization; <input type="checkbox"/> Provide health screenings when distributing information to patients; <input type="checkbox"/> Offer anything of value to induce plan enrollees to select them as their provider.

* Source: Center for Medicare & Medicare Services, "CMS Medicare Marketing Guidelines for MA, MA-PD, PDPs, and 1876 Cost Plans," July 25, 2006 (<http://www.cms.hhs.gov/PrescriptionDrugCovContra/Downloads/FinalMarketingGuidelines.pdf>)

** All entities contracted with a Part D plan