

Activities in a Healthcare Setting

This document provides some basic guidelines to assist agents in understanding which activities CMS allows in a **Healthcare Setting** when an agent is appointed with a carrier(s) to market Medicare Advantage (MA) and/or Medicare Prescription Drug Plans (PDP).

*This guidance is subject to change and any new rulemaking or interpretive guidance may supersede the guidance provided in this document. Please review Chapter 42 of the Code of Federal Regulations, Parts 422 and 423 and the individual carriers' guidelines for the most up-to-date information regarding activities in **Healthcare Settings**.*

Communications and Marketing

In order to understand which activities are allowed in a **healthcare setting**, it is important to understand what CMS considers **Communications** and **Marketing**.

- **Communications** is a new category of materials and activities to provide information on MA/PDP Plans to current and prospective enrollees. All activities and materials aimed at prospective and current enrollees, including their caregivers and other decision makers associated with a prospective or current enrollee, are **communications**.
- **Marketing** is a subset of **communications**. The definition was updated to include only materials that are most likely to lead a beneficiary to make an enrollment decision. **Marketing** contains information about the plan's benefit structure, cost sharing, and measuring or ranking standards. CMS review is required only for **marketing** materials.
- **Communication** activities and materials are distinguished from **marketing** activities and materials based on both **intent** and **content** of what is being conveyed.
 - **Intent** – the purpose of **marketing** activities and materials is to draw a prospective or current enrollee's attention to a plan or group of plans to influence a beneficiary's decision when selecting and enrolling in a plan or deciding to stay in a plan (retention-based **marketing**).
 - **Content** – based on the exclusions in the definition of **marketing** and **marketing** materials and the type of information that would be intended to draw attention to a plan or influence a beneficiary's enrollment decision, **marketing** activities and materials include:
 - Information about benefits or benefits structure;
 - Information about premiums and cost sharing;
 - Comparisons to other carriers' plans;
 - Ranking or measurements in reference to other carriers' plans; and/or
 - Information about Star Ratings
 - To identify **marketing** activities and materials, CMS evaluates both the **intent** and **content** of the activities and materials to determine if the definition of **marketing** is met.

Chapter 42 of the Code of Federal Regulations, Parts 422 and 423 are posted at:

<https://www.cms.gov/Medicare/Health-Plans/ManagedCareMarketing/FinalPartCMarketingGuidelines#:~:text=The%20Marketing%20guidelines%20reflect%20CMS%27%20interpretation%20of%20the,Code%20of%20Federal%20Regulations%2C%20Parts%20422%20and%20423%29.>

Provider or Healthcare Settings

Provider or Healthcare settings – Examples generally include but are not limited to:

- Hospitals;
- Physicians' offices;
- Outpatient clinics;
- Long-term care facilities (e.g., nursing homes and skilled nursing facilities);
- Pharmacies

Restricted Areas of a Healthcare Setting – Examples generally include but are not limited to:

- Exam rooms;
- Hospital patient rooms;
- Treatments areas where patients interact with a provider and his/her clinical team and receive treatment (including Dialysis treatment facilities); and
- Pharmacy counter areas

Common Areas of a Healthcare Setting – Examples generally include:

- Common entryways;
- Vestibules;
- Waiting rooms;
- Hospital or nursing home cafeterias, and
- Community, recreational or conference rooms

Agent Activities in a Healthcare Setting

Agents Must Not

- Conduct informal or formal **marketing/sales** events or sales activities in **restricted areas of healthcare settings**.
- Conduct an event in a **common area** of a **provider/healthcare setting** without first obtaining permission from the provider.
- Approach a consumer in **common areas**.
- Agents must not steer or attempt to steer a consumer toward a particular provider or providers, offered by any carrier based on the financial interest of the provider or agent.
- Agents must not enter into arrangements with providers to steer a consumer into a particular Medicare plan based on financial or any other interest of the provider.

Agent May

- Conduct **marketing/sales** activities and events in **common areas**.
- Distribute and collect enrollment applications in **common areas**.

NOTE: Agent *must* obtain approval from the provider before any activity can be performed in a **common area** of a **healthcare setting**.

Agent or Plan-Initiated Activities in a Healthcare Setting

Agent or Plan-Initiated Activities in a Healthcare Setting

Activities where either an agent requests contracted providers to perform a task or the provider acts on behalf of a carrier. For the purpose of agent-initiated activities, the agent must ensure compliance with requirements applicable to **communication** and **marketing** activities.

Agent requests for providers to discuss benefits and cost sharing fall under the definition of **marketing** and are prohibited from taking place where care is delivered. See also the “Provider-Initiated Activities” section.

Contracted providers may:

- Make available, distribute and display **communication** materials, including in areas where care is being delivered.
- Provide or make available **marketing** materials, business reply cards, lead cards, and enrollment applications (without agent identification included) outside of the areas where care is delivered, such as **common areas**.
- Provide contact information for an agent if requested or list contact information for multiple plan marketing representatives contracted with different carriers.

Contracted providers must not:

- Accept/collect Scope of Appointment (SOA) forms.
- Accept/collect business reply cards or lead cards.
- Accept enrollment applications or assist patients with enrollment activities.
- Call, direct, urge, or attempt to persuade patients (or consumers) to enroll in a specific plan based on financial or other interest of the provider.
- Mail **marketing** materials on behalf of the agent or a carrier.
- Offer inducements to persuade patients to enroll in a specific plan or select them as their provider.
- Distribute **marketing** materials/applications in areas where care is delivered.
- Conduct health screenings (e.g., hearing tests) as a **marketing** activity.
- Provide patient names or contact information to agents.
- Sell products or offer demonstration devices that consumers can take with them.
- Discuss their specific products/services or how the products/services relate to plan or plan benefits at an event.
- Discuss plan benefits, premiums, or cost sharing.
- Actively promote their practice, service, or product (e.g., distribute business cards) at an event, but may passively promote their practice, service, or product by displaying material for a consumer to take.
- Directly or indirectly accept compensation for **marketing** or enrollment activities.
- Give any gifts or services or anything of value to consumers to induce consumers to select them as their provider.
- Accept appointments for future clinical services while a guest at an event.

Provider-Initiated Activities in a Healthcare Setting

Provider-Initiated Activities

Provider-initiated activities are those conducted by a healthcare professional, including pharmacists, at the request of the patient or as a matter of course of treatment (not at the request of or for a plan), when meeting with the patient as part of the professional relationship between healthcare provider and patient. Provider-initiated activities do not include those conducted at the request of the plan sponsor or agent or based on the network participation agreement between the plan sponsor and the provider.

Provider-initiated activities are not defined as **marketing** activities and do allow more flexibility.

Providers May – at the request of the consumer:

- Provide to consumers the names of plan sponsors with which they contract and/or participate.
- Provide consumers with information and assistance in applying for Low Income Subsidy (LIS).
- Distribute unaltered printed materials created by CMS, such as reports from Medicare Plan Finder, the “Medicare & You” handbook, or “Medicare Options Compare” (from www.medicare.gov) including in areas where care is delivered.
- Refer patients to plan **marketing** materials available in **common areas** of a **healthcare setting**.
- Answer questions or discuss the merits of a plan or plans, including cost sharing and benefit information (these discussion may occur in areas where care is delivered).
- Refer patients to other sources of information, such as State Health Insurance and Assistance Office, local Social Security Office, CMS’ website at www.medicare.gov or 1800-MEDICARE.

Providers Must:

- Remain neutral when assisting consumers with enrollment decisions.

Providers Must Not:

- Offer or accept/collect Scope of Appointment (SOA) forms.
- Distribute or accept MA plan or PDP enrollment applications.
- Make phone calls or direct, urge, or attempt to persuade consumers to enroll in a specific plan based on financial or any other interest of the provider.
- Mail plan **marketing** materials on behalf of a plan or agent.
- Directly offer to plan members anything of value to induce the member to select them as their provider.
- Offer inducements to persuade consumers to enroll in a particular plan or with a particular plan sponsor.
- Conduct health screenings as a **marketing** activity.
- Accept compensation directly or indirectly from the plan or agent for conducting consumer **marketing** or enrollment activities.
- Identify, provide names, or share information about existing patients with the plan or agent for **marketing**/sales purposes.
- Distribute **marketing** materials where care is being delivered.
- Use superlatives when discussing the plan.

Institutional Special Needs Plans (I-SNP) and LTC Residents

Institutional Special Needs Plan (I-SNP) and LTC Residents:

- I-SNPs are permitted to offer plan information at the time of admission, due to the institutional nature of the plan.
- I-SNPs must put the appropriate boundaries in place between clinical and sales staff
- Staff working in a social worker capacity:
 - May provide information, including **marketing** materials
 - May NOT include enrollment forms (unless requested)
 - May NOT collect SOA or enrollment forms
- Additional actions must be consumer initiated