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**MARKETING INFORMATION:  
MEDICARE ADVANTAGE, MEDICARE ADVANTAGE PRESCRIPTION DRUG  
PLANS, PRESCRIPTION DRUG PLANS, AND 1876 COST PLANS**

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**TO: ALL PERSONS MARKETING MEDICARE ADVANTAGE, MEDICARE ADVANTAGE PRESCRIPTION DRUG PLANS, PRESCRIPTION DRUG PLANS, AND 1876 COST PLANS, INCLUDING INSURANCE COMPANIES, CROPORATIONS, HEALTH MAINTENANCE ORGANIZATIONS, EXCHANGES, MUTUALS, RECIPROCALLS, ASSOCIATIONS, LLOYD'S, OR OTHER INSURERS IN THE STATE OF TEXAS AND THEIR AGENTS AND REPRESENTATIVES AND THE PUBLIC GENERALLY**

**RE: Marketing Guidelines Related to Certain Medicare Plans and Prescription Drug Plans**

This bulletin is designed to remind companies, agents, subcontractors, and consumers that the marketing of Medicare Advantage (MA), Medicare Advantage Prescription Drug Plans (MA-PDs), Prescription Drug Plans (PDPs), and 1876 Cost Plans, is subject to strict marketing standards established by the Centers for Medicare and Medicaid Services (CMS). The marketing, promoting, and distributing of information that is misleading, deceptive, or fails to provide beneficiaries with full and completely accurate information is improper, and Oklahoma Insurance Department (OID) reminds carriers, agents, and all regulated entities of their responsibility to comply with both federal and state law.

CMS publishes the Medicare Marketing Guidelines ("the Guidelines") for the marketing of MA, MA-PDs, PDPs, and 1876 Cost Plans. On September 15, 2008, CMS published a supplement to the Guidelines to incorporate

provisions of the Medicare Improvements for Patients and Providers Act of 2008, Public Law 110-0275 (MIPPA). The Guidelines constitute CMS' interpretation of the Medicare Advantage and Prescription Drug Benefit rules (Code of Federal Regulations, Title 42, Parts 422 and 423) and the official position of CMS on marketing and operational instructions for these products. Compliance with the Guidelines is mandatory and any company marketing these products must ensure that its agents and subcontractors are in full compliance with both the rules and the Guidelines. ODI highly recommends that companies, agents, and subcontractors review the Guidelines in their entirety, which includes the following:

- Marketing material may not be distributed until the sponsoring organization has contracted with CMS and is able to initiate enrollment and operate as a Medicare organization in accordance with Title 42 of the Code of Federal Regulations;
- All marketing materials must be submitted to CMS prior to distribution. (The Guidelines provide specific clarification on what constitutes "marketing material" and specify which types of material require approval *prior to use* and which types of material qualify for *file and use*.);
- An organization is prohibited from advertising outside of its defined service area unless such advertising is unavoidable. For situations in which this cannot be avoided, organizations are required to disclose clearly their service area;
- Marketing materials may not be distributed that are materially inaccurate, misleading, or otherwise make material misrepresentations. In addition, an organization may not claim that any product is recommended or endorsed by CMS, Medicare, or the Department of Health & Human Services;
- An organization is responsible for all activities undertaken by its subcontractors on its behalf;
- Except for banner ads, banner-like ads, and outdoor advertising, all advertising material must include the statement that the organization contracts with the federal government. In addition, flyers and invitations to sales presentations that are used to invite attendance at

a group session with the intent of enrolling individuals attending must include the following two statements:

- “A sales representative will be present with information and applications;”
  - “For accommodation of persons with special needs at sales meeting, call **<insert phone and TTY/TDD numbers>**;”
- The “Summary of Benefits” is a standardized stand-alone marketing document, and it must be presented when marketing MA, MA-PDs, or PDPs;
  - Rebates of any sort or cash inducements to purchase are prohibited;
  - Door-to-door solicitations are prohibited prior to receiving an invitation to provide assistance in a residence;
  - E-mails addressed to a Medicare beneficiary are prohibited unless the beneficiary agrees to receive e-mails from the organization and has provided an e-mail address to the organization;
  - Marketing through unsolicited contacts, such as outbound marketing calls, calls to former members who have disenrolled, calls to beneficiaries to confirm acceptance of appointments made by third parties or independent agents, approaching beneficiaries in common areas, calls or visits to beneficiaries who attended a sales event, is prohibited, except under narrow circumstances established in the supplement to the Guidelines;
  - The marketing of non-health care related products to prospective enrollees during any sales activity or presentation is considered cross-selling and is prohibited;
  - Marketing representatives must clearly identify the types of products that will be discussed before marketing to a potential enrollee and have documentation that the beneficiary has agreed to the scope of the appointment;
  - An organization may not conduct sales activity in healthcare settings except in common areas (such as the hospital or nursing home cafeteria, community or recreational rooms, or conference rooms).

Such activities are prohibited in areas where patients primarily intend to receive health care services (such as waiting rooms, exam rooms, hospital patient rooms, dialysis centers, or pharmacy counter areas);

- Educational events may not include sales activities such as the distribution of marketing materials or the distribution or collection of plan applications;
- The use of names or logos of co-branded network providers on membership plan identification cards is prohibited;
- An organization may not allow prospective enrollees to be provided meals, or have meals subsidized, at any event or meeting at which plan benefits are being discussed and/or plan materials are being distributed;
- Independent agents and internal staff that perform marketing must be state-licensed;
- An organization must report both the appointment and termination of any broker or agent, and the reasons for the termination, to the State in which the broker or agent has been appointed in accordance with the State appointment law; and
- An organization must ensure that annually brokers and agents selling Medicare products are trained on Medicare rules and regulations and on plan details specific to the plan products being sold by the brokers and agents. In addition, an organization must ensure that brokers and agents selling Medicare products are tested annually on their knowledge of Medicare rules and regulations, as well as, on the plan specific details of the plan products being sold.

To promote cooperation, supervisory coordination, and the sharing of information between OID and CMS concerning the conduct of companies and persons involved in marketing the Medicare managed care and prescription drug programs, OID has entered into a memorandum of understanding (MOU) and agreement with CMS concerning regulatory cooperation and information. Under the MOU, OID and CMS agree to promptly share information regarding complaints, solvency, requests for corrective action, and other activities of a company or person engaged in insurance activities subject to the regulatory authority of OID and CMS. Additionally, the MOU

includes streamlining provisions related to enforcement activities and consumer complaint handling. The MOU better enables OID and CMS to work together to appropriately monitor and respond to marketing activities related to these products.

An electronic copy of the Guidelines and the supplement to the Guidelines is available online at the following locations respectively:

[www.cms.hhs.gov/PrescriptionDrugCovContra/Downloads/FinalMarketingGuidelines.pdf](http://www.cms.hhs.gov/PrescriptionDrugCovContra/Downloads/FinalMarketingGuidelines.pdf)

[http://www.cms.hhs.gov/ManagedCareMarketing/Downloads/MIPPA\\_Imp\\_memo091208Final.pdf](http://www.cms.hhs.gov/ManagedCareMarketing/Downloads/MIPPA_Imp_memo091208Final.pdf)