

(ii) Do not include information about measuring or ranking standards (for example, star ratings);

(iii) Mention benefits or cost sharing, but do not meet the definition of marketing in this section;

(iv) Are required under § 423.128, unless otherwise specified by CMS based on their use or purpose; or

(v) Are specifically designated by CMS as not meeting the definition of the marketing definition based on their use or purpose.

[83 FR 27915, June 15, 2018]

§ 423.2262 Review and distribution of marketing materials.

(a) *CMS review of marketing materials.*

(1) Except as provided in paragraph (a)(2) of this section, a Part D plan may not distribute any marketing materials (as defined in § 423.2260 of this Part), or enrollment forms, or make such materials or forms available to Part D eligible individuals unless—

(i) At least 45 days (or 10 days if using certain types of marketing materials that use, without modification, proposed model language and format, including standardized language and formatting, as specified by CMS) before the date of distribution, the Part D sponsor submits the material or form to CMS for review under the guidelines in § 423.2264 of this subpart; and

(ii) CMS does not disapprove the distribution of new material or form.

(2) If CMS does not approve or does not disapprove marketing materials within the specified review timeframe, the materials are deemed approved and the Part D sponsor may use the material.

(b) *File and use.* The Part D sponsor may distribute certain types of marketing material, designated by CMS, 5 days following their submission to CMS if the Part D sponsor certifies that in the case of these marketing materials, it followed all applicable marketing guidelines and, when applicable, used model language specified by CMS without modification.

(c) *Standardized model marketing materials.* When specified by CMS, organizations must use standardized formats and language in model materials.

(d) *Enrollee communication materials.* Enrollee communication materials

may be reviewed by CMS and CMS may determine, upon review of such materials, that the materials must be modified, or may no longer be used.

[70 FR 4525, Jan. 28, 2005, as amended at 75 FR 19826, Apr. 15, 2010; 80 FR 7965, Feb. 12, 2015; 83 FR 16755, Apr. 16, 2018]

§ 423.2264 Guidelines for CMS review.

In reviewing marketing material or election forms under § 423.2262, CMS determines that the materials—

(a) Provide to Medicare beneficiaries interested in enrolling, adequate written description of rules (including any limitations on the providers from whom services can be obtained), procedures, basic benefits and services, and fees and other charges in a format (and, where appropriate, print size) and using standard terminology that may be specified by CMS.

(b) Notify the general public of its enrollment period in an appropriate manner, through appropriate media, throughout its service area.

(c) Include in written materials notice that the Part D sponsor is authorized by law to refuse to renew its contract with CMS, that CMS also may refuse to renew the contract, and that termination or non-renewal may result in termination of the beneficiary's enrollment in the Part D plan. In addition, the Part D plan may reduce its service area and no longer be offered in the area where a beneficiary resides.

(d) Ensure that materials are not materially inaccurate or misleading or otherwise make material misrepresentations.

[83 FR 16755, Apr. 16, 2018]

§ 423.2266 [Reserved]

§ 423.2268 Standards for Part D Sponsor communications and marketing.

(a) In conducting communication activities, Part D sponsors may not do any of the following:

(1) Provide information that is inaccurate or misleading.

(2) Engage in activities that could mislead or confuse Medicare beneficiaries, or misrepresent the Part D sponsor.

(3) Claim the Part D sponsor is recommended or endorsed by CMS or

Medicare or that CMS or Medicare recommends that the beneficiary enroll in the Part D plan. It may explain that the organization is approved for participation in Medicare.

(4) Employ Part D plan names that suggest that a plan is not available to all Medicare beneficiaries.

(5) Display the names and/or logos of co-branded network providers or pharmacies on the sponsor's member identification card, unless the names, and/or logos are related to the member selection of specific provider organizations (for example, physicians, hospitals).

(6) Use a plan name that does not include the plan type. The plan type should be included at the end of the plan name.

(7) For markets with a significant non-English speaking population, provide vital materials, unless in the language of these individuals. Specifically, Part D sponsors must translate materials into any non-English language that is the primary language of at least 5 percent of the individuals in a plan benefit package (PBP) service area.

(b) In marketing, Part D sponsors may not do any of the following:

(1) Provide cash or other monetary rebates as an inducement for enrollment or otherwise.

(2) Offer gifts to potential enrollees, unless the gifts are of nominal (as defined in the CMS Marketing Guidelines) 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.

(3) Market non-health care/non-prescription drug plan related products to prospective enrollees during any Part D sales activity or presentation. This is considered cross-selling and is prohibited.

(4) 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.

(5) Market additional health related lines of plan business not identified prior to an individual appointment without a separate scope of appointment identifying the additional lines of business to be discussed.

(6) Distribute marketing materials for which, before expiration of the 45-day period, the Part D sponsor receives from CMS written notice of disapproval because it is inaccurate or misleading, or misrepresents the Part D sponsor, its marketing representatives, or CMS.

(7) Conduct sales presentations or distribute and accept Part D plan enrollment forms in provider offices 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.

(8) Conduct sales presentations or distribute and accept plan applications at educational events.

(9) Display the names and/or logos of provider co-branding partners on marketing materials, unless the materials clearly indicate that other providers are available in the network.

(10) Knowingly target or send unsolicited marketing materials to any Part D enrollee, whose prior year enrollment was in an MA plan, during the Open Enrollment Period.

(11) Engage in any other marketing activity prohibited by CMS in its marketing guidance.

(12) Engage in any discriminatory activity such as attempting to recruit Medicare beneficiaries from higher income areas without making comparable efforts to enroll Medicare beneficiaries from lower income areas.

(13) 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.

(14) Use providers or provider groups to distribute printed information comparing the benefits of different health plans unless the providers, provider groups, or pharmacies accept and display materials from all health plans with which the providers, provider groups, or pharmacies contract. The use of publicly available comparison information is permitted if approved by CMS in accordance with the Medicare marketing guidance.

(15) Provide meals to potential enrollees, which is prohibited, regardless of value.

[83 FR 16755, Apr. 16, 2018]