Medicare Marketing Guidelines
All providers who contract with Blue Cross and Blue Shield of New Mexico (BCBSNM) to provide Medicare Advantage services are expected to abide by the Centers for Medicare & Medicaid Services (CMS) rules for marketing when it involves BCBSNM or Blue Cross Medicare Advantage (HMO)℠ or Blue Cross Medicare Advantage PPO℠ products or benefits. View the guidelines below that are applicable to providers.

Chapter 3 – Medicare Marketing Guidelines

Provider Marketing Guidelines Excerpt
(Issued: 6-18-14)

70.11 - Marketing in the Health Care Setting

42 CFR 422.2268(j) and (k), 423.2268 (j) and (k)

Plans/Part D Sponsors and providers with whom they have a relationship(contractual, co-branding or otherwise) that assist beneficiaries with plan selection should ensure that provider assistance results in plan selection that is always in the best interest of the beneficiary.

Plans/Part D Sponsors may not conduct sales activities 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 from or interact with pharmacy providers and obtain medications.

Plans/Part D Sponsors are prohibited from conducting sales presentations, distributing and accepting enrollment applications, and soliciting Medicare beneficiaries in areas where patients primarily 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.

Plans/Part D Sponsors 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. Plans/Part D Sponsors may use providers to make available and/or distribute plan marketing materials as long as the provider and/or the facilities distributes or makes available Plan/Part D Sponsor marketing materials for all plans with which the provider participates. CMS does not expect providers to proactively contact all participating plans; rather, a Plan/Part D Sponsor must only ensure that a provider agrees to make available and/or distribute plan marketing materials they should do so if the Plan/Part D Sponsor indicates the provider must accept future requests from other Plans/Part D Sponsors with which the providers participate. Plans/Part D Sponsors may also provide materials for providers to display posters or other materials in common areas such as the provider's waiting room. Additionally, Plans/Part D Sponsors may provide materials to long-term care facilities to provide materials in admission packets announcing all plan contractual relationships.

SNP plans may provide to long term care facility staff, for distribution to residents that meet the I-SNP criteria, an explanatory brochure for each I-SNP with which the facility contracts. The brochure can explain about the qualification criteria and the benefits of being enrolled in an I-SNP. The brochure may have a reply card or telephone number for the resident or responsible party to call to request a meeting or request additional information.

70.11.1 - Provider-Based Activities

42 CFR 422.2268(e) and (j), 423.2268(e) and (j)

CMS is concerned with Plans/Part D Sponsors engaging in provider-based marketing activities because:

- Providers may not be fully aware of all plan benefits and costs.
- Providers may confuse the beneficiary if the provider is perceived as acting as an agent of the plan versus acting as the beneficiary's provider.
- Providers may face conflicting incentives when acting as a Plan/Part D Sponsor representative.

We recognize that Plans/Part D Sponsors have agreements with providers in connection with plan activities and expect those agreements to address marketing activity in a manner consistent with Medicare regulations. This includes ensuring that if a provider advertises non-health related items or services, the advertisement makes it clear that those items/services are not covered by the Plan/Part D Sponsor.

To the extent that the Plan/Part D Sponsor ensures that a provider assists a beneficiary in an objective assessment of his/her needs and potential options to meet those needs, the Plan/Part D Sponsor may use providers for such activities. Plans/Part D Sponsors may allow contracted providers to engage in discussions with beneficiaries should a beneficiary seek advice. However, Plans/Part D Sponsors must ensure, through their agreements with providers, that contracted providers are advised of the need to remain neutral when assisting with enrollment decisions and that providers do not:

- Offer scope of appointment forms.
- Accept Medicare enrollment applications.
- Make phone calls or direct, urge or attempt to persuade beneficiaries to enroll in a specific plan based on financial or any other interests of the provider.
- Mail marketing materials on behalf of Plans/Part D Sponsors.
- Offer anything of value to induce plan enrollees to select them as their provider.
- Offer inducements to persuade beneficiaries to enroll in a particular plan or organization.
- Conduct health screening as a marketing activity.
- Accept compensation directly or indirectly from the plan for beneficiary enrollment activities.
- Distribute materials/applications within an exam room setting.

Plans/Part D Sponsors may use and allow contracted providers to:

- Provide the names of Plans/Part D Sponsors with which they contract and/or participate (See section 70.11.2 for additional information on provider affiliation).
- Provide information and assistance in applying for the LIS.
- Make available and/or distribute plan marketing materials.
- Refer their patients to other sources of information, such as SHIPs, plan marketing representatives, their State Medicaid Office, local Social Security Office, CMS' website at http://www.medicare.gov/ or 1-800-MEDICARE.
- Share information with patients from CMS' website, including the "Medicare and You" Handbook or "Medicare Options Compare" (from http://www.medicare.gov), or other documents that were written by or previously approved by CMS.

70.11.2 – New or Continued Provider Affiliation Announcements

42 CFR 422.2262(a), 422.2268, 423.2262(a), 423.2268

Plans/Part D Sponsors may permit their providers to announce new or continuing affiliations between providers and specific Plans/Part D Sponsors through general advertising, (e.g., radio, television, websites). Plan/Part D Sponsors materials (including materials provided to providers) that describe plan benefits, premiums, or cost sharing must be submitted through HPMS. Materials that only announce the affiliation or continuing affiliation do not need to be submitted through HPMS.

New Affiliations

A new affiliation announcement may be made once within the first 30 days of a new contract agreement (in these announcements, Plan/Part D Sponsors may allow contracted providers to name only one Plan/Part D Sponsor). This may be done through direct mail, e-mail, by telephone, or advertisement. Neither the Plan/Part D Sponsor nor the contracted provider needs to notify beneficiaries that the provider may contract with other Plans/Part D Sponsors.

Continuing Affiliations

Continuing affiliation announcements may be made through direct mail, e-mail, phone or advertisement. Continuing affiliation announcements must clearly state that the provider may also contract with other Plans/Part D Sponsors.

70.11.3 - SNP Provider Affiliation Information

42 CFR 422.2268, 423.2268

Plans/Part D Sponsors may allow contracted providers to feature SNPs in a mailing announcing an ongoing affiliation. This mailing may highlight the provider's affiliation or arrangement by placing the SNP affiliations at the beginning of the announcement and may include specific information about the SNP and must include the appropriate disclaimer (refer to section 50). This includes providing information on special plan features, the population the SNP serves, or specific benefits for each SNP. The announcement must list all other SNPs with which the provider is affiliated.

70.11.4 - Comparative and Descriptive Plan Information

42 CFR 422.2268, 423.2268

Plans/Part D Sponsors may allow contracted providers to distribute printed information provided by a Plan/Part D Sponsor to their patients comparing the benefits of all of the different plans with which they contract. Materials must include the appropriate disclaimer (refer to section 50). Materials may not "rank order" or highlight specific plans and should include only objective information. Such materials should have the concurrence of all Plans/Part D Sponsors involved in the comparison and must be approved by CMS prior to distribution (i.e., these items are not be subject to File & Use). The Plans/Part D Sponsors must determine a lead Plan to coordinate submission of these materials to CMS for review (refer to section 90.2 for more information on submission of marketing materials).

70.11.5 - Comparative and Descriptive Plan Information Provided by a Non-Benefit/Non-Health Service Providing Third-Party

42 CFR 422.2268, 423.2268

Plans/Part D Sponsors may allow contracted providers to distribute printed information comparing the benefits of different Plans/Part D Sponsors (all or a subset) in a service area when the comparison is done by an objective third party, (e.g., SHIPs, State agency or independent research organizations that conduct studies). For more information on non-benefit/non-health service providing third party providers, refer to section 40.8.3.