

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

(x) Use a plan name that does not include the plan type. The plan type should be included at the end of the plan name, for example, "Super Medicare Advantage (HMO)." MA organizations are not required to repeat the plan type when the plan name is used multiple times in the same material.

(xi) Claim they are recommended or endorsed by CMS, Medicare, the Secretary, or HHS.

(xii) Convey that a failure to pay premium will not result in disenrollment, except for factually accurate descriptions of the MA organization's policies adopted in accordance with § 422.74(b)(1) and (d)(1) of this chapter.

(xiii) Use the term "free" to describe a \$0 premium, any type of reduction in premium, reduction in deductibles or cost sharing, low-income subsidy, or cost sharing pertaining to dual eligible individuals.

(xiv) Imply that the plan operates as a supplement to Medicare.

(xv) State or imply a plan is available only to or is designed for beneficiaries who are dually eligible for Medicare and Medicaid, unless it is a dual-eligible special needs plan or comparable plan as determined by the Secretary.

(xvi) Market a non-dual eligible special needs plan as if it were a dual-eligible special needs plan.

(xvii) Target marketing efforts primarily to dual eligible individuals, unless the plan is a dual eligible special needs plan or comparable plan as determined by the Secretary.

(xviii) Claim a relationship with the state Medicaid agency, unless a contract to coordinate Medicaid services for enrollees in that plan is in place.

(xix) Use the Medicare name, CMS logo, and products or information issued by the Federal Government, including the Medicare card, in a misleading way. Use of the Medicare card image is permitted only with authorization from CMS.

(2) MA organizations may do the following:

(i) State that the MA organization is approved to participate in Medicare programs or is contracted to administer Medicare benefits or both.

(ii) Use the term "Medicare-approved" to describe benefits or services in materials or both.

(iii) Use the term "free" in conjunction with mandatory, supplemental, and preventative benefits provided at a zero cost share for all enrollees.

(b) *Product endorsements and testimonials.* (1) Product endorsements and testimonials may take any of the following forms:

(i) Television or video ads.

(ii) Radio ads.

(iii) Print ads.

(iv) Social media ads. In cases of social media, the use of a previous post, whether or not associated with or originated by the MA organization, is considered a product endorsement or testimonial.

(v) Other types of ads.

(2) MA organizations may use individuals to endorse the MA organization's product provided the endorsement or testimonial adheres to the following requirements:

(i) The speaker must identify the MA organization's product or company by name.

(ii) Medicare beneficiaries endorsing or promoting the MA organization must have been an enrollee at the time the endorsement or testimonial was created.

(iii) The endorsement or testimonial must clearly state that the individual was paid for the endorsement or testimonial, if applicable.

(iv) If an individual is used (for example, an actor) to portray a real or fictitious situation, the endorsement or testimonial must state that it is an actor portrayal.

(c) *Requirements when including certain telephone numbers in materials.* (1) MA organizations must adhere to the following requirements for including certain telephone numbers in materials:

(i) When a MA organization includes its customer service number, the hours of operation must be prominently included at least once.

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(ii) When a MA organization includes its customer service number, it must provide a toll-free TTY number in conjunction with the customer service number in the same font size.

(iii) On every material where 1-800-MEDICARE or Medicare TTY appears, the MA organization must prominently include, at least once, the hours and days of operation for 1-800-MEDICARE (that is, 24 hours a day/7 days a week).

(2) The following advertisement types are exempt from these requirements:

(i) Outdoor advertising.

(ii) Banners or banner-like ads.

(iii) Radio advertisements and sponsorships.

(d) *Standardized material identification (SMID)*. (1) MA organizations must use a standardized method of identification for oversight and tracking of materials received by beneficiaries.

(2) The SMID consists of the following three parts:

(i) The MA organization contract or Multi-Contract Entity (MCE) number (that is, “H” for MA or Section 1876 Cost Plans, “R” for Regional PPO plans (RPPOs), or “Y” for MCE, a means of identification available for Plans/Part D sponsors that have multiple MA contracts) followed by an underscore, except that the SMID for multi-plan marketing materials must begin with the word “MULTI-PLAN” instead of the MA organization’s contract number (for example, H1234_abc123_C or MULTI-PLAN_efg456_M).

(ii) A series of alpha numeric characters (chosen at the MA organization’s discretion) unique to the material followed by an underscore.

(iii) An uppercase “C” for communications materials or an uppercase “M” for marketing materials (for example, H1234_abc123_C or H5678_efg456_M).

(3) The SMID is required on all materials except the following:

(i) Membership ID card.

(ii) Envelopes, radio ads, outdoor advertisements, banners, banner-like ads, and social media comments and posts.

(iii) OMB-approved forms/documents, except those materials specified in § 422.2267.

(iv) Corporate notices or forms (that is, not MA/Part D specific) meeting the

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definition of communications (see § 422.2260) such as privacy notices and authorization to disclose protected health information (PHI).

(v) Agent-developed communications materials that are not marketing.

(4) Non-English and alternate format materials, based on previously created materials, may have the same SMID as the material on which they are based.

[86 FR 6104, Jan. 19, 2021, as amended at 88 FR 22335, Apr. 12, 2023]

§ 422.2263 General marketing requirements.

Marketing is a subset of communications and therefore must follow the requirements outlined in § 422.2262 as well as this section. Marketing (as defined in § 422.2260) must additionally meet the following requirements:

(a) MA organizations may begin marketing prospective plan year offerings on October 1 of each year for the following contract year. MA organizations may market the current and prospective year simultaneously provided materials clearly indicate what year is being discussed.

(b) In marketing, MA organizations 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 beneficiaries, unless the gifts are of nominal value (as governed by guidance published by the HHS OIG), are offered to similarly situated beneficiaries without regard to whether or not the beneficiary enrolls, and are not in the form of cash or other monetary rebates.

(3) Provide meals to potential enrollees regardless of value.

(4) Market non-health care related products to prospective enrollees during any MA sales activity or presentation. This is considered cross-selling and is prohibited.

(5) Compare their plan to other plans, unless the information is accurate, not misleading, and can be supported by the MA organization making the comparison.

(6) Display the names or logos or both of provider co-branding partners on marketing materials, unless the materials clearly indicate via a disclaimer

or in the body that “Other providers are available in the network.”

(7) Knowingly target or send unsolicited marketing materials to any MA enrollee during the Open Enrollment Period (OEP).

(i) During the OEP, an MA organization may do any of the following:

(A) Conduct marketing activities that focus on other enrollment opportunities, including but not limited to marketing to age-ins (who have not yet made an enrollment decision), marketing by 5-star plans regarding their continuous enrollment special election period (SEP), and marketing to dual-eligible and LIS beneficiaries who, in general, may make changes once per calendar quarter during the first 9 months of the year;

(B) Send marketing materials when a beneficiary makes a proactive request;

(C) At the beneficiary’s request, have one-on-one meetings with a sales agent;

(D) At the beneficiary’s request, provide information on the OEP through the call center; and

(E) Include educational information, excluding marketing, on the MA organization’s website about the existence of OEP.

(ii) During the OEP, an MA organization may not:

(A) Send unsolicited materials advertising the ability or opportunity to make an additional enrollment change or referencing the OEP;

(B) Specifically target beneficiaries who are in the OEP because they made a choice during Annual Enrollment Period (AEP) by purchase of mailing lists or other means of identification;

(C) Engage in or promote agent or broker activities that intend to target the OEP as an opportunity to make further sales; or

(D) Call or otherwise contact former enrollees who have selected a new plan during the AEP.

(8) Advertise benefits that are not available to beneficiaries in the service area(s) where the marketing appears, unless the advertisement is in local media that serves the service area(s) where the benefits are available and reaching beneficiaries who reside in other service areas is unavoidable.

(9) Market any products or plans, benefits, or costs, unless the MA organization or marketing name(s) as listed in HPMS of the entities offering the referenced products or plans, benefits, or costs are identified in the marketing material.

(i) MA organization or marketing names must be in 12-point font in print and may not be in the form of a disclaimer or fine print.

(ii) For television, online, or social media, the MA organization or marketing name(s) must be either read at the same pace as the phone number or must be displayed throughout the entire advertisement in a font size equivalent to the advertised phone number, contact information, or benefits.

(iii) For radio or other voice-based advertisements, MA organization or marketing names must be read at the same pace as the advertised phone numbers or other contact information.

(10) MA organizations may not include information about savings available to potential enrollees that are based on a comparison of typical expenses borne by uninsured individuals, unpaid costs of dually eligible beneficiaries, or other unrealized costs of a Medicare beneficiary.

(c) The following requirements apply to how MA organizations must display CMS-issued Star Ratings:

(1) References to individual Star Rating measure(s) must also include references to the overall Star Rating for MA-PDs and the summary rating for MA-only plans.

(2) May not use an individual underlying category, domain, or measure rating to imply overall higher Star Ratings.

(3) Must be clear that the rating is out of 5 stars.

(4) Must clearly identify the Star Ratings contract year.

(5) May only market the Star Ratings in the service area(s) for which the Star Rating is applicable, unless using Star Ratings to convey overall MA organization performance (for example, “Plan X has achieved 4.5 stars in Montgomery, Chester, and Delaware Counties), in which case the MA organization must do so in a way that is not confusing or misleading.