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CENTERS FOR MEDICARE & MEDICAID SERVICES
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Medicaid Managed Care Marketing Regulations
Frequently Asked Questions

January 16, 2015

Note: The term "Medicaid managed care plan" refers to managed care organizations (MCOs), prepaid inpatient health plans (PIHPs), prepaid ambulatory health plans (PAHPs), and primary care case managers (PCCMs), as defined in 42 CFR 438.2.

Q1. Regulations at 42 CFR 438.104(b) (1) (IV) prohibit Medicaid managed care plans from seeking to influence enrollment in their plan in conjunction with the sale or offering of "private insurance." Does this prohibit a carrier that offers both a qualified health plan (QHP) and a Medicaid managed care plan from marketing both products?

A1. The regulation only prohibits insurance policies that would be sold "in conjunction with" enrollment in the Medicaid managed care plan. Section 438.104 alone does not prohibit a Medicaid managed care plan from providing information about a Qualified Health Plans (QHP) to potential enrollees who could enroll in such a plan *as an alternative* to the Medicaid managed care plan due to a loss of Medicaid eligibility or to potential enrollees who may consider the benefits of selecting an Medicaid managed care plan that has a related QHP in the event of future eligibility changes. However, Medicaid managed care plans should consult their contracts and the State Medicaid agency to ascertain if other provisions exist that may prohibit or limit such activity.

Section 438.104(b)(1)(iv) implements a provision in section 1932(d)(2)(C) of the Social Security Act, titled "Prohibition of Tie-Ins." In promulgating regulations implementing this provision, CMS clarified that we interpreted it to preclude tying enrollment in the Medicaid managed care plan with purchasing (or the provision of) other types of private insurance. We do not intend the statutory prohibition of tie-ins to apply to a discussion of a possible alternative to the Medicaid managed care plan, which a QHP could be if the consumer is determined to be not Medicaid eligible or loses Medicaid eligibility.

Q2. Do the terms of the contract between the State Medicaid agency and a Medicaid managed care plan apply to that organization's qualified health plan (QHP)?

A2. States are encouraged to review their managed care contracts to clearly identify the legal entity with which they are contracted for Medicaid coverage since federal Medicaid managed care regulations do not address this aspect of contracting. If the party to the contract is an entity (such as a parent company) that has a contract with a state Medicaid agency to provide benefits as a Medicaid managed care plan and is also a QHP issuer, then some contractual provisions may apply to both. Although the federal Medicaid regulations do not apply to a QHP issuer or QHP, state law, regulation, or

contract language may have implications for the QHP issuer. If changes are needed to narrow the scope of the contract to apply only to the Medicaid managed care plan, we encourage states to make those changes so as to ensure consistent understanding and application of the Medicaid contract terms.

Q3. If an individual who may already be enrolled in a Medicaid managed care plan, or is eligible to enroll in a Medicaid managed care plan, calls the plan's customer service unit with questions about that plan's Medicaid MCO and/or QHP products, can the Medicaid managed care plan answer consumer questions without violating the Medicaid marketing rules at 42 CFR 438.104?

A3. Yes. Responding to direct questions from consumers is not generally a violation of 42 CFR 438.104. Proactive consumer inquiries to a health plan for information about coverage options, benefits, or provider networks is no different than a consumer obtaining information from the health plan's website. So long as the limits on marketing are satisfied and respected (e.g., the information is accurate and does not mislead, confuse or defraud beneficiaries or the state Medicaid agency), responding to direct questions from potential enrollees with accurate information is not prohibited.

Q4. May Medicaid managed care plans conduct outreach to their enrollees regarding the Medicaid eligibility renewal process?

A4. There is no provision in 42 CFR 438.104 specifically addressing a Medicaid managed care plan's outreach to enrollees for eligibility purposes; therefore, it depends on the Medicaid managed care plan's contract with the state Medicaid agency. The federal regulation at 42 CFR 438.104 defines marketing as "any communication, from an [Medicaid managed care plan] to a Medicaid *beneficiary who is not enrolled in that entity*, that can reasonably be interpreted as intended to influence the beneficiary to enroll in that particular [Medicaid managed care plan's] Medicaid product, or either to not enroll in, or to disenroll from, another [Medicaid managed care plan's] Medicaid product." So long as information and outreach about the eligibility renewal process is neither directed to beneficiaries who are not enrolled with that Medicaid managed care plan, nor intended to influence the beneficiary to enroll in that particular Medicaid managed care plan—or to not enroll in, or disenroll from another Medicaid managed care plan—the activity is not within the scope of 42 CFR 438.104. Materials and information that purely educate an enrollee of that Medicaid managed care plan on the importance of completing the State's Medicaid eligibility renewal process in a timely fashion would not meet the federal definition of marketing. However, Medicaid managed care plans should consult their contracts and the state Medicaid agency to ascertain if other provisions exist that may prohibit or limit such activity.