

410-141-3270

### Marketing Requirements

- (1) CCOs may not conduct, directly or indirectly, door-to-door, telephonic, electronic, mail or other cold call marketing practices to seek or influence the client to enroll in that CCO.
- (2) CCOs may engage in activities to existing members for outreach, health promotion and health education.
- (3) The Authority must approve, prior to distribution, any written communication by the CCO or its subcontractors and providers that:
  - (a) Is intended solely for members; and
  - (b) Pertains to provider requirements for obtaining coordinated care services, care at service sites or benefits.
- (4) CCOs may communicate with providers, caseworkers, community agencies and other interested parties for informational purposes. The intent of these communications should be informational only and not to entice or solicit membership. Communication methodologies may include, but are not limited to brochures, pamphlets, newsletters, posters, fliers, Web sites, health fairs or sponsorship of health-related events.
- (5) The creation of name recognition, because of the CCO's health promotion or education activities, shall not constitute an attempt by the CCO to influence a client's enrollment.
- (6) CCOs shall cooperate with the Authority in developing a comprehensive explanation of the services available from the CCO for the Division communications.
- (7) Subcontractors may post a sign listing all OHP CCOs to which the provider belongs and display CCO-sponsored health promotional materials.

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### Potential Member Information Requirements

(1) CCOs shall develop informational materials for potential members:

(a) CCOs shall provide the Authority with informational materials sufficient for the potential member to make an informed decision about provider selection. Upon request, the CCO must make available to potential members information on participating providers. The information must include participating providers' name, location, languages spoken other than English, qualification and the availability of the PCPs, clinic and specialists, prescription drug formularies used and whether they are currently accepting members. A CCO or the Authority may include informational materials in the application packet for potential members;

(b) CCOs shall ensure that all CCO staff who have contact with potential members are fully informed of the CCO's and the Authority's rules applicable to enrollment, disenrollment, complaint and grievance policies and interpreter services, including which participating providers' offices have bilingual capacity;

(c) Information for potential members must comply with marketing prohibitions in 42 CFR 438.104 and OAR 410-141-3270.

(2) Informational materials that CCOs develop for potential members in its service area shall meet the language requirements of, and be culturally sensitive to, people with disabilities or reading limitations, including substantial populations whose primary language is not English.

(a) CCOs shall follow the Authority's substantial household criteria required by ORS 411.970, which determines and identifies those populations considered to be non-English speaking households. The CCO shall provide informational materials, which at a minimum, shall include the member handbook in the primary language of each substantial population. Alternative forms may include but are not limited to audio tapes, close-captioned videos, large type, and Braille;

(b) CCOs shall write all written informational materials for potential members at the sixth grade reading level and printed in 12 point font or larger.

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requires the State, its contracted representative, or MCO, PIHP, or PAHP to furnish the information at least 30 days before the effective date of the policy.)

(2) As specified in § 438.10, paragraphs (e) and (f), the information that MCOs, PIHPs, and PAHPs must furnish to enrollees and potential enrollees does not include how and where to obtain the service excluded under paragraph (a)(2) of this section.

(c) *Information requirements: State responsibility.* For each service excluded by an MCO, PIHP, or PAHP under paragraph (a)(2) of this section, the State must provide information on how and where to obtain the service, as specified in § 438.10, paragraphs (e)(2)(i)(E) and (f)(6)(xii).

(d) *Sanction.* An MCO that violates the prohibition of paragraph (a)(1) of this section is subject to intermediate sanctions under subpart I of this part.

[67 FR 41095, June 14, 2002; 67 FR 65505, Oct. 25, 2002]

§ 438.104 Marketing activities.

(a) *Terminology.* As used in this section, the following terms have the indicated meanings:

*Cold-call marketing* means any unsolicited personal contact by the MCO, PIHP, PAHP, or PCCM with a potential enrollee for the purpose of marketing as defined in this paragraph.

*Marketing* means any communication, from an MCO, PIHP, PAHP, or PCCM to a Medicaid recipient who is not enrolled in that entity, that can reasonably be interpreted as intended to influence the recipient to enroll in that particular MCO's, PIHP's, PAHP's, or PCCM's Medicaid product, or either to not enroll in, or to disenroll from, another MCO's, PIHP's, PAHP's, or PCCM's Medicaid product.

*Marketing materials* means materials that—

(1) Are produced in any medium, by or on behalf of an MCO, PIHP, PAHP, or PCCM; and

(2) Can reasonably be interpreted as intended to market to potential enrollees.

*MCO, PIHP, PAHP, or PCCM* include any of the entity's employees, affiliated providers, agents, or contractors.

(b) *Contract requirements.* Each contract with an MCO, PIHP, PAHP, or

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PCCM must comply with the following requirements:

(1) Provide that the entity—

(i) Does not distribute any marketing materials without first obtaining State approval;

(ii) Distributes the materials to its entire service area as indicated in the contract;

(iii) Complies with the information requirements of § 438.10 to ensure that, before enrolling, the recipient receives, from the entity or the State, the accurate oral and written information he or she needs to make an informed decision on whether to enroll;

(iv) Does not seek to influence enrollment in conjunction with the sale or offering of any private insurance; and

(v) Does not, directly or indirectly, engage in door-to-door, telephone, or other cold-call marketing activities.

(2) Specify the methods by which the entity assures the State agency that marketing, including plans and materials, is accurate and does not mislead, confuse, or defraud the recipients or the State agency. Statements that will be considered inaccurate, false, or misleading include, but are not limited to, any assertion or statement (whether written or oral) that—

(i) The recipient must enroll in the MCO, PIHP, PAHP, or PCCM in order to obtain benefits or in order to not lose benefits; or

(ii) The MCO, PIHP, PAHP, or PCCM is endorsed by CMS, the Federal or State government, or similar entity.

(c) *State agency review.* In reviewing the marketing materials submitted by the entity, the State must consult with the Medical Care Advisory Committee established under § 431.12 of this chapter or an advisory committee with similar membership.

§ 438.106 Liability for payment.

Each MCO, PIHP, and PAHP must provide that its Medicaid enrollees are not held liable for any of the following:

(a) The MCO's, PIHP's, or PAHP's debts, in the event of the entity's insolvency.

(b) Covered services provided to the enrollee, for which—

(1) The State does not pay the MCO, PIHP, or PAHP; or