

Medicare Communications and Marketing Guidelines (MCMG)

Date: **September 5, 2018**

40.7 – Prohibition of Open Enrollment Period Marketing

42 CFR §§ 422.2268(b)(10), 423.2268(b)(10)

Plans/Part D sponsors are prohibited from knowingly targeting or sending unsolicited marketing materials to any MA enrollee or Part D enrollee during the continuous Open Enrollment Period (OEP) (January 1 to March 31). “Knowingly” takes into account the intended recipient as well as the content of the message.

During the OEP, Plans/Part D sponsors may:

- 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),
 - 5-star plans marketing the continuous enrollment SEP, and
 - Marketing to dual-eligible and LIS beneficiaries who, in general may make changes once per calendar quarter during the first nine months of the year.
- Send marketing materials when a beneficiary makes a proactive request
- At the beneficiary’s request, have one-on-one meetings with a sales agent
- At the beneficiary’s request, provide information on the OEP through the call center

Note: The unintentional receipt of other marketing materials by beneficiaries who have already made an enrollment decision would not be considered knowingly targeting. For example, if a Plan sent mailers to a list of age-ins with messaging that discusses the Initial Coverage Election Period, it is possible that some of the age-ins may have already made an enrollment decision; however, the content of the message combined with the intended audience would not be considered prohibited OEP marketing.

During the OEP, Plans/Part D Sponsors may not:

- Send unsolicited materials advertising the ability/opportunity to make an additional enrollment change or referencing the OEP
- 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
- Engage in or promote agent/broker activities that intend to target the OEP as an opportunity to make further sales
- Call or otherwise contact former enrollees who have selected a new plan during the AEP