DevotedHealth

Sales Partner Marketing & Communication Guide 2023/2024

Version 2.0
August 2023

Table of Contents

Devoted's Commitment to Our Sales Partners

Devoted Health is committed to help our sales partners (i.e. "TPMOs") develop compliant marketing and communication materials. ***The purpose of this document is to provide guidance to our partners contracted with Devoted Health when developing such materials.***

The guidelines provided here apply specifically to all communication and marketing materials. It is not a comprehensive list of compliance guidelines that apply to the marketing and selling of Devoted Health products.

Sales partners must comply with Centers for Medicare & Medicaid Services (CMS), Title 42 of the Code of Federal Regulations (CFR) and any applicable state or federal laws, rules or regulations. This includes not only the content of the material, but how and when the material is used. All communications or marketing materials must include required disclaimers. All marketing materials must be submitted to CMS prior to use, pursuant to 42 CFR § 422.2261(a).

Thank you for your continued partnership! Any questions on any information provided within this guidance or with any marketing or communication materials can be directed to agencyoversight@devoted.com

HPMS User Access

All sales partners creating marketing materials for multiple plans ("multiplan") must get appropriate access to CMS' Health Plan Management System (HPMS) set up with Devoted Health. If you do not yet have an active CMS user ID with access to HPMS, you must first register with CMS and obtain a CMS user ID.

See the attached CMS instructions for getting a CMS user ID and obtain access to HPMS.

https://www.cms.gov/research-statistics-data-and-systems/computer-data-and-systems/hpms/useridprocess

REQUESTING & DELETING HPMS ACCESS:

To add CMS marketing consultant access or to add or delete contracts for existing consultant access, Devoted's Sales Ops Integrity team will prepare an official letter on behalf of the agency that states the users **name, CMS user ID, company name** and the contract numbers for which consultant access is needed. Again, you must first have a CMS user ID in place before Devoted can proceed with the process.

Send the following details for any user(s) in an email to Agencyoversight@Devoted.com with the subject line"Request: HPMS Access Updates"

Consultant (First & Last Name	CMS user ID	Consultant Company Name

Multiple names at the same agency can be included if they are all obtaining the same consulting access type.

Devoted will submit an access request to CMS. CMS generally completes all user access requests and deletions within 10 business days.

Devoted's Marketing Review Process

Sales partners are responsible for developing multi-plan marketing materials.

All multiplan marketing materials must be reviewed by Devoted prior to submission in HPMS. Devoted may require a sales agency to submit communication materials for prior review and approval.

Overview:

- Sales partners submit marketing materials to Devoted for pre-review before submitting to HPMS.
- Reviews will be completed by Devoted's Sales Ops Integrity within 5-7 business days.
- Changes and feedback - All agencies agree to make, and/or have discussion with Devoted, any suggested change(s).
- Prior Approval:
    - Approved - Once approved, the agency can proceed with submission into HPMS.
    - Not approved - The agency should not select Devoted in the HPMS submission (Contract selection).
- Opt-in & Opt-out:
    - Opt-In: Devoted will opt-in once notification from CMS has been received.
    - Opt-out - Agencies are not permitted to sell Devoted products for any lead received for material in which Devoted "opted-out." Agencies must have a process in place to support opt out.

Prior Approval

All Sales partners must submit marketing material to Devoted prior to approval. The Sales Ops Integrity team at Devoted is responsible for reviewing materials prior to the agencies uploading into HPMS. The review and approval process is as follows:

1. TPMO sends all Multi-plan marketing materials to Devoted for review prior to uploading into HPMS:

- Submit materials to agencyoversight@devoted.com using this submission template: Devoted Health TPMO Marketing Review Template

- Use one template, even if submitting multiple materials. Use ***"****Request - Marketing Materials for Pre-Review"* as your subject line.

- Attach the link for the marketing material.

2. Devoted will review all materials for compliance with CMS regulations, and Devoted Health's guidelines. This review process can take between 5-7 business days.

    a. If the material is approved for submission, Devoted will opt-in to the materials once the agency has uploaded the material into HPMS.

    b. If Devoted does not approve the material, the sales partner has a few options:
        i. Work with Devoted on necessary changes needed - once approved, the sales partner can include Devoted as an MA contract within HPMS submission; or

        ii. If a sales partner does not choose to make the Devoted requested changes, the sales partner cannot select Devoted within HPMS and are not permitted to sell Devoted products for any lead received from material in which Devoted "opted-out."

    Devoted will communicate the decision with the agency via email and ask that our name not be added to the piece(s) when they upload to HPMS.

    c. The sales partner can always add additional MA plans to the material in HPMS after the material has been accepted and/or approved

Marketing vs Communications

CMS defines both marketing and communication materials. Generally, Devoted's review is limited to marketing materials, unless otherwise requested.

Here is how CMS defines Communications vs Marketing:

- **Communications:** These are activities and use of materials created or administered by the plans or any downstream entity to provide information to current and prospective enrollees. All activities and materials aimed at prospective and current enrollees, including their caregivers, are "communications" within the scope of the regulations at 42 CFR Parts 417, 422, and 423.

- **Marketing:** "Marketing" is a subset of communication with specific intent and content. To be considered a marketing, the materials must meet both the following intent and content standards:

    - **Intent** – Materials and activities that are intended to:
        - Draw attention to a MA plan or plans,
        - Influence a beneficiary's decision-making process when making a MA plan selection, or
        - Influence a beneficiary's decision to stay enrolled in a plan (that is, retention-based marketing)

    - **Content** – Materials and activities that include or address content regarding any of the following:
        - Benefits, benefits structure, premiums or cost sharing.
        - Measuring or ranking standards (for example, Star Ratings or plan comparisons).
        - Rewards and incentives.

CMS now considers "marketing" any material with general widely available benefits, like dental, vision & hearing as "marketing" materials. Please make sure that you no longer include this information in your communication materials. CMS Definition of Marketing

For more details on the CMS requirements, see

General Requirements - Development of Multi-Plan Marketing Materials

CMS permits our sales partners to submit multi-plan marketing materials directly to CMS when the marketing materials include content to support multiple (two or more) plans. For example, if the sales partner operates a website that lists several MA organizations and their cost sharing, and is used by beneficiaries to select and enroll into a plan, the sales partner may submit the website on behalf of the contracted plans.

All marketing materials developed by Devoted's sales partners must comply with all CMS marketing regulations. The information that follows and is included within this guide provides direction to develop materials in accordance with these requirements.

Disclaimers

Third-Party Marketing Organization (TPMO) Disclaimer:

If your agency sells plans on behalf of more than one MA organization, you must include the following TPMO following disclaimer on all marketing materials:

> *We do not offer every plan available in your area. Currently we represent [insert number of organizations] organizations which offer [insert number of plans] products in your area. Please contact Medicare.gov, 1-800-MEDICARE, or your local State Health Insurance Program (SHIP) to get information on all of your options.*

Note: For 2024, Devoted has one (1) organization and 145 PBPs.

The TPMO disclaimer must:

- Be electronically conveyed when communicating with a beneficiary through email, online chat, or other electronic means of communication;
- Prominently displayed on TPMO websites; and
- Included in any marketing materials, including print materials and television advertisements, developed, used or distributed.

Federal Contracting Statement:

CMS requires a Federal Contracting Statement on all marketing materials. For CY2024, Devoted's FCS is:

> *Devoted Health is an HMO and/or PPO plan with a Medicare contract. Our D-SNPs also have contracts with State Medicaid programs. Enrollment in our plans depends on contract renewal.*

CMS provides a few exceptions where the FCS is not required on a material:

- Banners and banner-like advertisements.
- Outdoor advertisements.
- Text messages.
- Social media.

- Envelopes.

Sales partners should create an FCS that fits their company. For example:

> *<Company> is a licensed representative of Medicare Advantage (HMO, PPO, and PDP) organizations that have a Medicare contract. Enrollment in any plan depends on contract renewal.*

Names of Medicare Advantage Plans

CMS requires the names of all contracted organizations associated with this marketing to be included in the marketing material**.**

Lead Generation Activities

When conducting lead generation activities, a disclosure must be included that lets the beneficiary know that his or her information will be provided to a licensed agent for future contact. This disclosure must be provided as follows:

- Tell the beneficiary that his/her/their information will be provided to a licensed agent for future contact. This disclosure must be provided as follows:
  - Verbally when communicating with a beneficiary through telephone.
  - In writing when communicating with a beneficiary through mail or other paper.
  - Electronically when communicating with a beneficiary through email, online chat, or other electronic messaging platform.

- Tell the beneficiary that he/she/they are being transferred to a licensed agent who can enroll them into a new plan.

Anti-Discrimination

CMS prohibits discrimination based on race, ethnicity, national origin, religion, gender, sex, age, sexual orientation, gender identity, or mental or physical disability, health status, claims experience, medical history, genetic information, evidence of insurability, or geographic location.

Additionally, all web-based communications must be Section 508 compliant (i.e. able to be read by a screen reader or other screen reader technology) so the member experience is comparable for those who may be vision or hearing impaired.

- **Do not require prospects to provide date of birth (DOB)**. If a DOB is requested through a lead form or scope of appointment , it must be clear to the prospect that it is an optional field.

- **Avoid use of the term "senior"** as it may imply that people with Medicare are only eligible due to aging in (65+); CMS views the use of the term "senior" in some contexts as potentially discriminatory against those who have Medicare due to a qualifying disability. There are some instances where the term may be permissible, such as for plans that are only available to those that are 65 or older, but "people with Medicare" or "Medicare eligible" is the preferred terminology.

1557 OCR Anti-Discrimination Notice

- The Office of Civil Rights (OCR) Section 1557 of the Affordable Care Act anti-discrimination notice and multi-language tagline should be included on all significant publications or significant communications. See this FAQ for more information.
- Recommended language: "<Agency> must comply with applicable Federal civil rights laws and not discriminate on the basis of race, color, national origin, age, disability, sex, sexual orientation, gender identity, or religion."

Inappropriate Requests for Health Status Information

- **Do not request health status information** unless required for enrollment into a plan (e.g. Chronic Condition SNP) or as required by CMS as part of the "pre-enrollment checklist" review prior to enrollment. An MA organization may not deny, limit, or condition the coverage or furnishing of benefits to individuals eligible to enroll in an MA plan offered by the organization on the basis of any factor that is related to health status, including, but not limited to the following:
    - Medical condition, including mental as well as physical illness
    - Claims experience
    - Receipt of health care
    - Medical history
    - Genetic information
    - Evidence of insurability, including conditions arising out of acts of domestic violence
    - Disability
- Ensure that any questions or other language in BRC's, plan comparisons, sales or enrollment processes or scripts, do not directly or indirectly require this information, unless necessary for enrollment in the plan.

Telephonic Script Guidance

- During telephonic sales presentations ; agents may ask, *but not require* the beneficiary to provide information regarding their Medicare ID number, Part A or Part B effective dates, or any other demographic or health information.
- The only information an agent needs from a beneficiary in order to provide non-beneficiary specific plan information is zip code, county, and/or state.
- If the beneficiary does not wish to disclose any of this information, the agent must continue the call and provide plan information to the beneficiary.
- The agent cannot end the call if the beneficiary does not disclose this information, as this could be seen as discriminatory.

Customer Service Numbers

- Customer service numbers must be toll-free numbers.
- A TTY number must appear in conjunction with the customer service number in the same font size and style as the other phone numbers except as outlined below.
  Exceptions:
  - Outdoor advertising (ODA) or banner/banner-like ads.
  - Radio advertisements and radio sponsorships (e.g., sponsoring an hour of public radio).
  - In television ads, the TTY number may be a different font size/style than other phone numbers to limit possible confusion.

Email Communications

- Must provide an opt-out process on each communication for those who wish to no longer receive email or other electronic communications.
- *Note: Text messaging and other forms of electronic direct messaging (e.g., social media platforms) would fall under unsolicited contact and are not permitted unless there has been expressed permission.*

Websites

- Websites must be clear and easy to navigate.
- If communicating about both current year and upcoming year plans (AEP), it must be clear to which plan year the information is referencing.
- May only require users to enter zip code, county, and/or state for access to non-beneficiary specific website content.

- Websites containing any marketing content must be submitted to CMS.

Lead Forms

- Sales partners are responsible for ensuring that they are gathering and purchasing leads in a compliant manner that is consistent with Devoted Health policies and procedure, CMS guidelines, and other federal and state regulations.
- Permission to contact must be clear to the consumer that they are agreeing to give their contact information and requesting for a licensed sales agent to contact them regarding Medicare plan information.
- Agency-created websites or websites that are used by partners to obtain leads that contain lead forms need to be clear, easy to understand and navigate.
- Agencies cannot require consumers to disclose their health status, gender, or date of birth information to solicit for Medicare Advantage or Prescription Drug Plans.
- FDR websites must not require users to enter any information other than a zip code, county, and/or state for access to non-beneficiary specific website content.

Permission to Contact

- If a potential enrollee provides permission to be called or otherwise contacted, the contact must be event-specific, and may not be treated as open-ended permission for future contacts.
- Telephone Consumer Protection Act (TCPA)guidelines stipulate when requesting information from a beneficiary agencies need to, at the minimum, disclose:
    - Calls may be made by auto dialer, text (if applicable) or robocall (if applicable)
    - Calls are for marketing purposes
    - Cellular carrier charges may apply
    - Providing permission does not impact eligibility to enroll or the provision of services
    - Can change permission preferences at any time

Social Media

- Sales partners must submit any social media (Devoted Health account) posts (e.g., Facebook, Twitter, YouTube) that meet the CMS' definition of marketing for Devoted's review and then CMS filing by the partner.

Any Material that Mentions Providers

- Any communication or marketing material that mentions a provider and Devoted Health must be submitted to Devoted Health for review prior to use.
- Providers are prohibited from mailing marketing materials on behalf of the plan. This includes mailers that describe general plan benefits and do not mention any particular carrier.

Nominal Gifts

- Gifts may be given to Medicare beneficiaries for marketing purposes so long as the total retail value is no more than $15 retail value, $75 aggregate, per person, per calendar year. Materials promoting/offering a gift must state that the gift is available with **no obligation to enroll**.
- Must be offered to all potential enrollees regardless of whether they enroll, and without discrimination.
- May not be in the form of cash or rebates.
- May not be items that are considered drug/health benefits (e.g., a free checkup), including optional mandatory supplemental benefits; may not be tied directly or indirectly to the provision of any other covered item or service.

Educational or Sales Materials

- Materials that include invitations to educational or sales events must clearly be advertised as 'educational' or "sales" on the material(s) itself.

- The following disclaimers must be added to the Educational or Sales Event materials:
  - Sales Events: "For accommodation of persons with special needs at sales meetings call 1-800-338-6833 (TTY 711). A licensed sales agent will be on site with plan materials and enrollment applications."
  - Educational Events: "For accommodation of persons with special needs at meetings call 1-800-338-6833 (TTY 711).

<u>Important reminders for materials for sales & educational events:</u>

- Only BRCs can be distributed at educational events.
- Scope of Appointments ("SOAs) cannot be distributed at educational events
- Sales events can not immediately follow educational events.

For more information about sales and educational event requirements, see Devoted's "Broker Manual."

Prohibited Terminology/Statements

Devoted Health prohibits agencies from distributing communications that are materially inaccurate, misleading, or otherwise make misrepresentations or could confuse beneficiaries.

CMS has seen logos that are very similar to the Health and Human Services (HHS) logo, on websites and print materials. These logos have featured circles with writing around the circle and a bird, wings, or other images that appear to be the same image used by the Federal Government. There are also numerous third-party internet sites with "Medicare" in the URL or a logo similar to the HHS logo, potentially causing a beneficiary to click on a private site when they intend to go to Medicare.gov or are seeking official Medicare information or access.

All marketing materials must clearly identify who is sending the marketing material (e.g. lead generation company and/or sales partner) company and where the beneficiary will be directed.

Examples of misleading content include:

- Identifying a Medicare Supplement plan as a Medicare Advantage plan;
- Creating direct mail solicitations or websites that look like official government notifications; and
- Using words and/or imagery that may confuse beneficiaries or cause them to believe the advertisement is coming directly from the government.
- Providing information about Original Medicare or Medicare plans that is inaccurate or unclear.

  Areas of concern include:
  - Company/insurance agency/broker not prominently displayed.
  - Includes the American flag or imagery such as government buildings and/or symbols.
  - Overuse of red, white and blue as the color scheme with no company identification to clarify you are not affiliated with Medicare.
  - Includes a company name that is similar to or includes "Medicare" or a name that may confuse consumers into believing the company is affiliated with Medicare, and does not prominently clarify that the company is a sales agency and not the government or endorsed by the government.
  - Not include disclaimers, or contains hidden or very small disclaimers, including but not limited to those to clarify the company is a sales agency and not the government or endorsed by the government.

Use of Medicare Card Image

Sales partners that plan to use the Medicare card image on any marketing or communication piece must send the material to CMS for approval.

- The material must be sent via email to the CMS marketing mailbox at Marketing@cms.hhs.gov with an attached copy of the material that includes the card image.
- CMS suggests all pieces using the Medicare card include a disclaimer near the image that indicates they are not affiliated or endorsed by CMS, HHS, the Federal Government, etc.
- Once approved by CMS, the piece **and** the CMS approval email must be submitted to the HPMS marketing module using the SMID of the marketing piece.

Comparisons to Other Plans/Original Medicare

- Do not compare Devoted Health plans to other plans/Original Medicare by name (unless substantiated by a study or statistical data) and such comparisons are factually based. *Must include footnote referencing data/study.
- Comparison cannot be misleading or confusing to members.
- Do make disparaging comments about other plans/Original Medicare.

References to Research or Studies

- Agencies may not make unsupported claims in advertising. If a statement is made that requires statistical support or documentation, current and accurate sources must be cited. Ensure that citations are either built into the text or referenced by footnote and include the date and source of the study or research.
- Agencies may not make superlative statements such as "the best" or "highest ranked" or "number one" unless these statements can be validated. If you can't support it, you can't state it.
    - If a "highly rated" statement is used, need to include the following substantiation language, *"XX% of the plans offered through <Agency> are highly rated. Highly rated is considered 4 and above out of 5 stars. Medicare evaluates plans based on a 5-Star rating system. Star Ratings are calculated each year and may change from one year to the next."*

Claims of Endorsement

Do not make claims that Devoted Health or Devoted Health plans are recommended or endorsed by the Center of Medicare & Medicaid Services (CMS), or the Department of Health & Human Services (DHHS).

"Partnership" or "Alliance"

Avoid words like "partnership" or "alliance" in reference to the relationship between Devoted Health

and the agency/agent or Devoted Health and a vendor.

Endorsements / Testimonials

If member testimonials are used, must use actual members who are currently active in the plan they are endorsing. Testimonials must also include the name of the plan in which the member is enrolled ("Devoted Health"). Must add required disclaimer language: "Real Devoted Health Member." (only the first time we "see" the member if they appear multiple times, such as in a TV ad).

- Ensure the member has given consent for quotes to be used in the particular medium, such as on a website.
- If an individual is paid to endorse or promote the plan or product, this must be clearly stated (e.g., "paid endorsement").
- If an individual, such as an actor, is paid to portray a real or fictitious situation, the ad must clearly state it is a "Paid Actor Portrayal."
- Any endorsement or testimonial that is made by a healthcare provider (even if another individual quotes the provider) must be discussed with and reviewed by Devoted Health prior to use. Providers can not be paid or compensated for testimonials in any way.
- Any claim made in an endorsement or testimonial must be substantiated.
- An endorsement or testimonial cannot use negative testimonials about other Plans/Part D Sponsors.

Language Rules & Restrictions

Plan Marketing Name

Devoted Health has formally filed the name "**Devoted Health**" with CMS. This means all materials must use "Devoted Health" and NOT a shortened version of our Marketing Name (i.e. "Devoted").

Correct Terminology to Describe Agents

It is acceptable to use the following terms:

- Licensed Sales Agent
- Licensed Sales Representative
    - *Note: "Medicare Expert" may not be used as it can be misleading, implying the agent may have additional knowledge/skill above licensing requirements that can't be verified. Using the word Medicare in the title may also make it seem as if we're endorsed by Medicare.*
- If an agent's phone number or one that will route to sales is included, must clearly indicate before the number that it will direct callers to a "licensed sales agent".

Superlatives and Absolute Language

- Do not use unsubstantiated absolute or qualified superlative language, such as “best”, “greatest,” “#1” or “outstanding”.
- Do not use absolute language such as “guarantee” or “promise” (these are only examples).

Describing Medicare

- When comparing Original Medicare to MAPD, it must be more specific than just “Medicare”.
- It is preferable to describe it as “Medicare Part A and Part B.”
- The term “Original Medicare” can also be used.

Use of the word “Free”

- When describing gifts/services like, “Free Medicare Plan Comparison”, need to include “no obligation to enroll” language. (At a minimum disclaimer language is needed).
- It is preferred to have this language in proximity to the FREE reference. If there are space issues, may use an asterisk with the language notated at the bottom in a footnote.
- Do not use the term “free” to describe a zero dollar premium, reduction in premiums (including Part B buy-down), reduction in deductibles or cost-sharing, low-income subsidy (LIS), or cost sharing for individuals with dual eligibility.
    - *It is only permissible to use the term “free” with respect to plan benefits when describing mandatory, supplemental, and preventive benefits provided at a zero-dollar cost sharing for all members.*

Use of Qualifying Language

- Do not use superlative statements like, “You will save thousands of dollars”, “This is the best plan for you”
- Instead use phrases like “you **may** be able to save money”(if accurate).
- Use other words such as “eligible” or “you might”, “you may” “you could potentially save”, “should” or “maybe ” (if accurate).

Words to avoid

- Entitled (can only be used when discussing Original Medicare)
- Any Affordable Care Act reference

Acceptable Words and Terms to use at the end of AEP

Approved phrases to communicate at the end of AEP(Annual Election Period), that doesn't create false sense of urgency:

- Don't delay
- Enroll now
- Now's the time
- The time is now
- Don't Miss Out
- Get the answers you need
- AEP is ending soon (may only be used within 2 weeks of 12/7)
- AEP ends on 12/7

Scare and High-Pressure Tactics

- Avoid using language to create undue fear or anxiety in members/prospects, such as "beware of some plans whose copays could bust your budget", etc.
- Avoid words that would cause a false sense of urgency, such as "Act now, or you may lose your benefits!" etc.
- Avoid repetitive phrases, certain font/colors, and/or punctuation that may communicate this to a potential enrollee.
    - Examples may include **"URGENT!!!"** used on a material with font that is in all caps, oversized and red.
    - One specific example, provided by a Medicare beneficiary, is a postcard with the beneficiary-named address with ''Medicare Notice'' in large, (sometimes red) bold letters at the top along with ''Personal & Confidential'' and ''Important Medicare Information.

General Election Period Requirements for Marketing & Communication Materials:

When submitting materials in HPMS, please indicate the selling period(s) that the material will be used in the marketplace.

Annual Election Period (AEP)

- In order to ensure that beneficiaries are not misled or confused about Original Medicare open enrollment versus MA/PDP fall open enrollment and the new January – March Open Enrollment Period (OEP), the following term should be used when describing AEP: "Annual Enrollment Period" or "Medicare Annual Election Period."
- It must be clear in the context of the piece as a whole that the piece is referring to the AEP when a person can enroll in a Medicare Advantage or Prescription Drug Plan.

Open Enrollment Period (OEP)

- Agencies 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).

- Be careful in not appearing to be marketing during OEP.
    - "Switching" language must not be used during the OEP.
    - Specifically calling out the OEP, or outlining the options a member has during the Open Enrollment Period would likely be considered marketing the OEP by CMS.
    - Any materials used during OEP that only focus on the ability to switch - instead of focusing on the ability to enroll through the use of ICEP and other SEP's, would not be allowed.

During the OEP, agency partners/agents 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.

During the OEP, agency partners/agents 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.

It is important to consider the intent of any material prior to including information about the OEP.

- Materials that specifically call out the OEP, or outline the options a member has during the Open Enrollment Period would likely be considered marketing the OEP by CMS.
- If creating advertisements that will be used during OEP, necessary qualifiers must be included that speak to those who may be aging in, new to Medicare, losing coverage, or other SEP qualifying event, so as not to violate the prohibition of knowingly targeting or sending unsolicited marketing material during the Open Enrollment Period (OEP).

Rest of Year (ROY) and Special Election Periods (SEP)

When marketing Medicare plans outside of AEP to the general public, only a small percentage of members/prospects will be aging-in, recently moved, or have other SEP qualifying conditions. Therefore, be careful not to mislead members/prospects into believing they could change their respective plans outside of AEP. Agencies cannot market for an upcoming plan year prior to October 1.

When marketing during ROY, materials **must:**

- Materials that discuss a beneficiary's enrollment eligibility need to be clear that the piece is describing eligibility for a Special Election Period, or to "enroll in the plan".
- Marketing materials that appear to be marketing towards the general public and include a call to action such as "Call now to get the benefits you deserve" could be considered misleading and may be opted out of by Devoted Health.
- All advertisements used during ROY must include on the materials:
    - include language
    - Necessary qualifiers that speak to those who may be aging in, new to Medicare, losing coverage, or other SEP qualifying event - ; OR
    - If the qualifier is not clearly stated within the marketing material, the call to action must be that they are calling to see if they are eligible to enroll, call to learn more, or "call to see if you qualify" for a special election period.
    - A disclaimer explaining that: "Enrollment in the described plan type may be limited to

certain times of the year unless you qualify for a Special Enrollment Period."

Branding & Logo Requests

- Any sales partner who would like to use the Devoted logo must submit the Devoted Health Logo and Publication Request Form

- The following items are required in order to process the request: Agency Name, Material Type, (I.E. Flier, website, etc.), Target Audience, Market Area and Verbiage.

- An email communication will be sent to the sales partner and their Market Sales Leader advising of the status of the request (i.e. approved or denied).
    A. Approvals - All approvals will include the specific Logo attached as a pdf.
    B. Denials - If denied, the email will explain the reason for denial.

References

- Code of Federal Regulations (CFR), Title 42 (*Public Health*), Chapter IV (*HHS*), Subpart B (*Medicare*), Part 422 (*Medicare Advantage Program*), Subpart V (*Medicare Advantage Communications Requirements)*: See §§ 422.2260, 422.2261, 422.2262, 422.2263, 422.2264 and 422.2274

  https://www.ecfr.gov/current/title-42/chapter-IV/subchapter-B/part-422#subpart-V

- Centers for Medicare and Medicaid Services (CMS), Medicare Managed Care Manual, Medicare Communications and Marketing Guidance (MCMG) https://www.cms.gov/medicare/health-plans/managedcaremarketing/finalpartcmarketingguidelines

- Centers for Medicare and Medicaid Services (CMS), Chapter 2 of the Medicare Managed Care Manual. https://www.cms.gov/medicare/eligibility-and-enrollment/medicaremangcareeligenrol

- Office of Civil Rights (OCR) Section 1557 of the Affordable Care Act