Oversight of Marketing Materials

Effective Date: 01/01/2018

Policy

A. It is the policy of the ACO to ensure that direct and online Marketing Materials and Activities used to educate, solicit, notify, and/or contact Beneficiaries or Providers/Suppliers adhere to CMS regulations. The ACO will also ensure that education, engagement materials, outreach, and websites adhere to ACO rules and regulations as the Plain Writing Act of 2010, Sections 504 and 508 of the Rehabilitation Act, and the Americans with Disabilities Act of 1990.

Applicability

This policy and procedure applies to all Next Generation Participants, Preferred Providers, Next Generation Professionals, and other individuals or entities performing functions or services related to the ACO's activities.

Procedure

A. Marketing Materials and Activities (hereinafter referred to as "Materials") shall be developed in compliance with CMS regulations.

B. All requests for Materials used by Next Generation Participants and Preferred Provider and/or for Beneficiaries shall be sent to the Executive Directors (EDs).

    1. Upon request from an ED, Collaborative Health Systems (CHS) Marketing and Communications departments will create the appropriate Materials.

    2. All Materials must go through the CHS Marketing, Brand, and Compliance review and approval process to ensure that all CMS regulations, federal laws, and organizational guidelines, are met.

C. Where available, all Materials must use CMS developed template language.

D. If no CMS developed template language is available, to the extent possible, plain language that adheres to Federal Plain Language Guidelines will be used for Materials.

E. Materials will be clear, concise, well organized, and follow best practices appropriate to the subject or field and intended audience.

F. Materials will not be inaccurate, misleading, or discriminatory.

G. Materials will not include language suggesting:

    1. that Beneficiaries are required to see providers only within the ACO or are in any way prohibited from seeing providers outside of the ACO;

2. that Beneficiaries enroll or are participating in ACOs. Language should be clear that it is the provider, not the Beneficiary that has chosen to participate in the ACO.
3. CMS endorses one ACO over another; or,
4. a Next Generation ACO is in any way superior to other ACOs, or other types of ACOs, or that the providers participating in the Next Generation ACO are superior to other providers participating in other ACOs or CMS initiatives.

H. Materials will not be used in a discriminatory manner or for a discriminatory purpose (e.g., to avoid at-risk Beneficiaries).

I. All Materials must be reviewed and approved by Compliance prior to use to ensure compliance with all requirements, including those specified in the Next Generation ACO Model Descriptive Materials and Activities Guidance released by CMS.

J. Descriptive ACO Materials and Activities must, be reviewed and filed with CMS per the ten (10) day file & use approval submission requirements.

1. Determination of applicability of CMS file & use requirements will be made by Compliance and Compliance will be responsible for submitting any Materials to CMS in accordance with the Next Generation ACO Model Descriptive Materials and Activities Guidance released by CMS.
2. Materials submitted to CMS are deemed approved after the expiration of the initial ten (10) day review period if:
    i. The ACO certified is writing its compliance with all the marketing requirements under the Next Generation ACO Model Participation Agreement; and
    ii. CMS does not disapprove the materials
3. CMS may disapprove Materials at any time, including after the expiration of the initial ten (10) day review period.
4. If a Material that was deemed approved is later disapproved by CMS, the ACO must discontinue use of the Material.
5. Any material changes to CMS-approved materials must be reviewed and approved by CMS before use.
6. The ACO shall retain copies of all written and electronic Descriptive ACO Materials and Activities and appropriate records for all other Descriptive ACO Materials and Activities provided to Beneficiaries for a period of ten (10) years.

J. CMS approval must be obtained for the publication or release of any press release, external report or statistical/analytical material that materially and substantially references the ACO's participation in the Model or the ACO's financial arrangement with CMS. External reports and statistical/analytical material may include, but are not limited to paper, articles, professional publications, speeches and testimony.

Oversight of Marketing Materials

Effective Date: 01/01/2018

1. All external reports and statistical/analytical materials must include the following statement on the first page: "The statements contained in this document are solely those of the authors and do not necessarily reflect the views or policies of CMS. The authors assume responsibility for the accuracy and completeness of the information contained in this document."

K. All materials will be assigned a Material ID (Mat ID) to ensure proper tracking and version control for each piece. Any material lacking this Mat ID or the approval designation at the end of the Mat ID, has not been approved by the appropriate parties and should not be used. If you find a material without a proper Mat ID, cease use immediately and contact the Compliance Officer.

1. A material that does not require CMS approval, and has been approved internally by compliance will have a Material ID located in the bottom left corner of the first page. The Mat ID will follow this template: ACOID_Descr_SubmissionDate_IA Approved.
    i. Ex: V124_GPROTr_1112_IA Approved
2. A material that has been submitted to, and approved by, CMS will have a Material ID located in the bottom left corner of the first page. The Mat ID will follow this template: ACOID_MaterialDescription_SubmissionDate_File & Use Approved.
    i. Ex: V134_Bene_Notification_Letter_02.21.2016_File & Use Approved

L. The ACO may provide materials in languages other than English. In the event that the English version of these materials were submitted to CMS for approval, the ACO will attest that the foreign language versions are accurate translations of the CMS approved materials. CMS does not provide distinct approval of translated materials.

M. Materials will not offer gifts, cash, or other remuneration as inducements for:

1. Receiving items or services from an ACO, Next Generation Participant, Preferred Provider, or Next Generation Professional; or,
2. Remaining in an ACO or with a Next Generation Participant, Preferred Providers, or Next Generation Professional in a particular ACO.

N. Materials may offer in-kind items to Beneficiaries (i.e., may provide items for free or below market value) to encourage care coordination and Beneficiary health awareness as long as this provision is approved by the Compliance Officer and meets all regulatory requirements.

1. If the ACO wishes to provide such in-kind items, it must notify the ED, who must then submit the request to the Compliance Officer.
2. The Compliance Officer will work collaboratively with the ED and ACO to provide the in-kind item or similar benefit which achieves the same goal and complies with all regulatory requirements.

Oversight of Marketing Materials

Effective Date: 01/01/2018

Reporting

A. N/A

Related Documentation

A. Next Generation ACO Model Participation Agreement Sections V.E and XVI.B

B. Centers for Medicare and Medicaid Services; Next Generation ACO Model Descriptive Materials and Activities Guidelines; released April 29,2016

C. 45 CFR §164.501 and §164.508(a)(3)(I)

D. For more information on Federal Plain Language Guidelines, go to: www.plainlanguage.gov