

## **101 – MARKETING**

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04/07/16

STAFF RESPONSIBLE FOR POLICY: DHCM OPERATIONS

### **I. PURPOSE**

This Policy applies to Acute Care, ALTCS/EPD, and DES/DDD (DDD) Contractors. This Policy establishes guidelines and restrictions for Contractors regarding marketing activities related to the AHCCCS program.

### **II. DEFINITIONS**

<b>DUAL ELIGIBLE</b>	A member who is eligible for both Medicare and Medicaid.
<b>DUAL MARKETING</b>	Marketing efforts specifically targeting a Contractor enrollee who is eligible for Medicare and Medicaid.
<b>ENROLLEE</b>	A Medicaid recipient who is currently enrolled with a Contractor 42 CFR 438.10(a).
<b>FINANCIAL SPONSOR</b>	Any monies or in kind contributions provided to an organization, other than attendance fees or table fees, to help offset the cost of an event.
<b>HEALTH MESSAGE</b>	A slogan or statement on marketing materials to promote healthy lifestyles, situations that affect or influence health status, behaviors that affect or influence health status, or methods or modes of medical treatment.
<b>MARKETING</b>	Any communication from Contractors to a member that can reasonably be interpreted as intended to influence the member to enroll or disenroll with that particular Contractor as described in 42 CFR 438.104. For the purposes of this Policy, Marketing contrasts with Member Information found in Policy 404, which addresses guidelines and restrictions for Contractors related to member and potential enrollee information and activities.

**MARKETING MATERIALS**

Materials produced in any medium, by or on behalf of the Contractor that can reasonably be interpreted as intended for marketing purposes. This includes general audience materials such as general circulation brochures, Contractor's web site and other materials that are designed, intended, or used to increase Contractor membership or establishing a brand. Examples include, but are not limited to: scripts or outlines for member services representatives, provider directories, brochures or leaflets that are distributed or circulated by any third party (including providers), and posters.

**POTENTIAL ENROLLEE**

A Medicaid-eligible recipient who is not yet enrolled with a Contractor as described in 42 CFR 438.10 (a); or an Enrollee during Annual Enrollment Choice (AEC).

**PROMOTION**

Any activity in which marketing materials are given away or displayed where the intent is to increase the Contractor's membership.

**SOCIAL NETWORKING APPLICATIONS**

Web based services (excluding the Contractor's State mandated website content, member portal, and provider portal) that provide a variety of ways for users to interact, such as e-mail, comment posting, image sharing, invitation and instant messaging services.

**III. POLICY**

Contractors' marketing activities are limited to those defined by this Policy. As required within 42 CFR 438.104, marketing materials may only be utilized if they are approved by AHCCCS and comport to this Policy. In addition to approval of advertising copy, approval of the publication in which the ad will be placed is also required.

The Contractor is responsible for ensuring its subcontractors comply with this Policy. Failure of a subcontracted provider to adhere to this Policy may result in sanctions/penalties to the Contractor.

**A. MARKETING MATERIALS, GIVE-AWAYS, EVENTS, SPONSORSHIPS, PRESS RELEASES AND CONTRACTOR LOGO AND NAME USE**

**1. Materials and Give-Aways**

Member materials that have been previously approved as member information under ACOM Policy 404 may be used during marketing activities only if they comply with the requirements of this Policy.

The Contractor must submit marketing materials and marketing items (giveaways) for approval to AHCCCS as required under this Policy. If approved, the materials and giveaways may be distributed by the Contractor for a period of two years from the date of approval. The materials and giveaways must be resubmitted to AHCCCS for approval if the Contractor makes a substantial change to the item. In addition to marketing materials and giveaways, the Contractor may submit templates for flyers or posters that advertise regular meetings or events where only the dates and times of the events change. If approved, these templates may be distributed by the Contractor for a period of two years from the date of approval.

The Contractor may distribute health educational materials without prior AHCCCS approval. The materials must be health-related and developed based on information from a recognized organization. For a list of approved recognized organizations see ACOM Policy 404, Attachment A. If these materials include Contractor specific information related to the AHCCCS Medicaid Contract (e.g. enrollment, network or information on services) the materials must be submitted for approval.

The Contractor shall ensure that:

- a. The value of any marketing item (give-away) to the general public by the Contractor shall not exceed \$15.00.
- b. Give-away items are health related (e.g. toothbrush, dental floss) or if non-health related (e.g. cups, key chains, buttons, t-shirts), include a health message (e.g. Don't Smoke, Get Your Flu Shot).
- c. All materials identify the Contractor as an AHCCCS provider and are consistent with the requirements for information to members described in the contract and AHCCCS policies.
- d. All materials that have been produced by the Contractor and refer to contract services shall specify: **“Contract services are funded in part under contract with the State of Arizona”**.
- e. Marketing materials that are distributed by the Contractor shall be distributed to its entire contracted Geographic Service Area (GSA). Exclusion of any particular group or class of members would be considered to be a discriminatory marketing practice and subject to sanction.
- f. The Contractor does not encourage or induce a member to select a particular Contractor when completing the application and may not complete any portion of the application on behalf of the potential enrollee. This prohibition covers all situations, whether sponsored by the Contractor, their parent company, or any other entity.

## 2. Events

The Contractor may participate in health-related marketing events that are listed in Figure 1 in the “Pre-Approved” column. However, all events that are listed in this “Pre-Approved” column must either be health related or have a health education component (e.g., celebration events.). If the event is not listed as a “Pre-Approved” event, the Contractor must submit a request including the event name and date with

the location and address to the AHCCCS Marketing Committee for prior approval. The Contractor's participation in events must be substantive; an unmanned booth with handouts is not acceptable. The Contractor is not required to obtain approval from AHCCCS to attend pre-approved events listed in Figure 1 of this Policy, with the following exceptions:

- a. Contractor pays sponsorship fees,
- b. Contractor donates benefits or items (e.g. raffle items, gift baskets, cash), and/or
- c. Contractor distributes materials not previously approved by AHCCCS within the last two years.

The Contractor may not attend events that are listed in the "Not-Approved" column in Figure 1 of this Policy, or any event determined by AHCCCS to not be in the best interest of the State of Arizona.

If the Contractor is not certain if an event would qualify as "Pre-Approved", the Contractor must submit a request for approval to the AHCCCS Marketing Committee prior to the event. The request shall include the Name and date of the Event, the location and the address.

***Example:***

*Roosevelt Shot Clinic (Name of Event)*  
*Phoenix Ranch Market (Location)*  
*1602 E Roosevelt St (Address)*  
*Phoenix, AZ 85006*  
*9AM-1PM (Start and End Time)*  
*Flu Shots (Service)*

*We will distribute the following:*  
*Tooth Brush Approved 12/10/14*

*We will be handing out the tooth brush kits as the Roosevelt Clinic has been stressing dental hygiene this month.*

**FIGURE 1 - PRE-APPROVED AND NOT-APPROVED EVENTS**

<b>PRE-APPROVED EVENTS</b> <i>(Must Be Health Related)</i>	<b>NOT-APPROVED</b>
Back to School Events	Events that are not health related or do not have a health education component
College/University Events	
DES Health and/or Resource Events – if open to all AHCCCS plans	DES offices (except those listed on the approval list)
WIC Health and/or Resource Events – if open to all AHCCCS plans	WIC Offices (except those listed on the approval list)
Events where health education is a component (e.g. Celebration events – Angeles Del Barrio, etc.)	Job Fairs
Community Center/Recreational Events (e.g. Golden Gate, Boys and Girls Club, YMCA, parks and senior center)	County/State Fairs
Community/Family Resource Events (e.g. Food banks, food distribution locations, homeless and/or women’s shelters)	Bi-national Health Events (e.g. Mexican consulate on their premises)
Provider Events (e.g. Doctors, hospitals, and/or specialist) that the Contractor is contracted with	Political Events
Faith Based Events	Pharmacy Events not open to all Contractors
Farmers Market Events	
Health Educational Forum (community sponsored) (e.g. Nutritional, health benefits, and prevention topics)	Swap Meets
Safety Events (e.g. Sun safety, water safety, and fire safety)	AHCCCS Contractor’s Event that is created and sponsored by the Contractor or through its affiliates for AHCCCS members not enrolled with the Contractor, or for the general public
Immunization Clinics	
Senior Events	
Shopping Mall Events	
AHCCCS Contractor’s Event that is created and sponsored by the Contractor for its own members only	

3. Sponsorships

The Contractor may participate as a financial sponsor of health-related marketing events that are listed in Figure 1 of this Policy in the “Pre-Approved” column. In addition to the information required to be submitted for events, the request must include the dollar amount of the participation, and either a copy or description of any materials (including websites) on which the Contractors name or logo will appear prior to production.

4. Press Releases

The Contractor may issue press releases or announcements about program innovations and events that promote the goals of the AHCCCS program. Press releases that do not include Contractor-specific information related to the AHCCCS Medicaid Contract (e.g. benefits, how to enroll, provider network) do not require prior AHCCCS approval. All other press releases must be submitted for AHCCCS prior approval.

5. Contractor Logos and Name Inclusion

The Contractor is responsible for preventing misuse of their name and logo. Upon receiving AHCCCS approval for an event, the Contractor logo can be included on event flyers or websites that are produced by hosting organizations without prior approval. The use of the Contractor name or logo is prohibited for television advertising of the event. If the Contractor is a financial sponsor for the event, event flyers or websites will require prior approval by AHCCCS.

**B. RESTRICTIONS**

The following restrictions apply to all marketing activities [42 CFR 438.104].

1. The following shall **not** be allowed:
  - a. Solicitation of any individual face-to-face, door-to-door, or over the telephone or other cold-call marketing activities,
  - b. References to competing Contractors,
  - c. Promotional materials, incentives, or any other activity to influence enrollment in conjunction with the sale or offering of any private insurance,
    - i. For the purposes of this policy, Qualified Health Plans are not considered private insurance,
    - ii. The Contractor may discuss its affiliated Qualified Health Plan in promotional materials; however, the Contractor is a separate legal entity from all other affiliated health plans and is therefore subject to restrictions on the use of protected health information,
  - d. Television advertising,
  - e. Direct mail advertising,

- f. Social Networking Applications (see ACOM Policy 425 for requirements regarding social networking),
  - g. Marketing of non-mandated services,
  - h. Utilization of the word “free” in reference to covered services,
  - i. Listing of providers in marketing materials who do not have signed contracts with the Contractor,
  - j. Use of the AHCCCS logo,
  - k. Inaccurate, misleading, confusing or negative information about AHCCCS or the Contractor; and any information that may defraud members or the public,
  - l. Discriminatory marketing practices as specified in the Arizona Administrative Code 9 A.A.C. 22, Article 5, 9 A.A.C. 28, Article 5, 9 A.A.C. 31, Article 5,
  - m. Contractors providing services in a GSA where its enrollment is capped to prohibit members from selecting the Contractor may not engage in marketing activities in that GSA, but may engage in outreach and retention activities with its current members.
2. Any activities, materials, or mediums in violation of this Policy will be subject to sanction regardless of previous approval or terms of privately held contractual agreements.
  3. AHCCCS will review the restrictions of the following activities on an annual basis:
    - a. Radio advertising,
    - b. Billboard advertising,
    - c. Bus advertisements (including bus stops and city and school busses).
  4. AHCCCS reserves the right to impose additional restrictions.

### **C. DUAL ELIGIBLE MARKETING**

Dual marketing focuses on enrollment in the Contractor’s Medicare Dual Special Needs Plan (D-SNP). The State understands that the Medicare D-SNP is able to enroll any dual eligible member, but to increase alignment, encourages the Contractor to only market to individuals enrolled in its AHCCCS plan. Marketing to dual eligible Contractor enrollees may include print advertisements, radio advertisements, billboards, bus advertising, and television.

1. In the case of marketing materials for dual eligible enrollees the process will be as follows:
  - a. AHCCCS does not review for approval dual marketing materials that have been approved by CMS and/or that do not include reference to AHCCCS benefits and/or service information. However, **all** dual marketing materials that have not been approved by CMS and/or include reference to AHCCCS benefits and/or service information require submission to AHCCCS as specified in Contract, Section F, Attachment F3, Contractor Chart of Deliverables

- b. While AHCCCS may accept CMS approval of dual marketing materials as sufficient for distribution of materials, AHCCCS retains and reserves the right to review before or after the fact, materials that have received CMS approval.
2. The Contractor must adhere to the following regarding use of billboards which use the terms 'Medicaid' or 'AHCCCS':
  - a. Limited to two in each urban county (Maricopa and Pima), and
  - b. Limited to one in each rural county.

#### **D. CONTRACTOR RESPONSIBILITIES**

1. The Contractor is required to report their marketing costs on a quarterly basis as a separate line item in the quarterly financial statements. This requirement also applies to any marketing costs included in an allocation from a parent or other related corporation.

Additionally, any Contractor not in compliance with the AHCCCS viability criteria indicators, as defined in the contract, may be restricted from further marketing until the Contractor is in compliance with the viability criteria indicators.

The Contractor CEO (or designee) shall sign and submit Attachment A, Marketing Attestation Statement as specified in Contract, Section F, Attachment F3, Contractor Chart of Deliverables. The DDD Contractor's Attestation Statement will address the compliance of its subcontracted health plans with the requirements of this policy.

2. The Contractor shall review and revise all materials on a regular basis in order to reflect current practices. Any changes or amendments to previously approved materials (e.g., prior leaflet approved, but subsequently modified) must also be submitted in advance to AHCCCS for approval as indicated above.
3. The Contractor shall submit a Marketing Activities Report of the previous month's marketing activities as specified in Contract, Section F, Attachment F3, Contractor Chart of Deliverables. This includes events in which the Contractor was a participant. Participation includes but is not limited to having a booth at the event, and/or having a presence at the event. The report must be submitted using the excel format in Attachment B, Marketing Activities Report of this Policy. The DDD Contractor's Report will address marketing activities of its subcontracted health plans.

The AHCCCS Marketing Committee will review the Contractor's monthly submission to determine if the Contractor's participation in the events was in compliance with this Policy. If AHCCCS determines a violation has occurred, the Contractor may be subject to sanctions. Failure to disclose an event attended may also result in Administrative Action.

#### 4. Submission Requirements

All Marketing materials including, giveaways, event requests, sponsorships and press releases, and dual eligible marketing materials must be submitted separately to the AHCCCS Marketing Committee for approval at least 21 days prior to dissemination as specified in Contract, Section F, Attachment F3, Contractor Chart of Deliverables. If 21 day notice is not possible, the Contractor may request an expedited review, but the request must be clearly marked as expedited and also indicate the reason for the shortened timeframe.

AHCCCS approval shall only apply to the form of communication or specific date described with the submission. Any substantial modifications of previously approved marketing materials shall be clearly identified and resubmitted.

The Contractor may contest AHCCCS' decision by filing a grievance in accordance with 9 A.A.C. 34.

#### **E. SANCTIONS/PENALTIES**

Any violation of this Policy may result in Administrative Action, including but not limited to, sanctions as described in ACOM Policy 408.

#### **IV. REFERENCES**

- Acute Care Contract Section D
- ALTCS/EPD Contract Section D
- DES/DDD Contract Section D
- Contract, Section F, Attachment F3, Contractor Chart of Deliverables
- ACOM Policy 404
- ACOM Policy 408
- ACOM Policy 425
- Attachment A, Marketing Attestation Statement
- Attachment B, Marketing Activities Report
- 9 A.A.C. 22 Article 5
- 9 A.A.C. 28 Article 5
- 9 A.A.C. 31 Article 5
- 9 A.A.C. 34
- 42 CFR 438.10(a)
- 42 CFR 438.104

**ATTACHMENT A, MARKETING ATTESTATION STATEMENT**

**SEE THE ACOM WEBPAGE FOR ATTACHMENT A OF THIS POLICY**

**ATTACHMENT B, MARKETING ACTIVITIES REPORT**

**SEE THE ACOM WEBPAGE FOR ATTACHMENT B OF THIS POLICY**