

Innovative Health Alliance of New York

Policy No. 07

EFFECTIVE DATE: 9/21/15

POLICY TITLE:

Marketing Materials and Activities

REVIEW BY: 9/21/17

POLICY

Innovative Health Alliance of New York (IHANY) will comply with the Centers for Medicare and Medicaid Services ("CMS") requirements for Medicare Shared Savings Program ("MSSP") Accountable Care Organizations ("ACOs") Marketing Materials and Activities (as defined herein).

PROCEDURE

1. IHANY will comply with CMS' *Guidelines for the MSSP ACO Marketing Materials* as published on the SSP Portal and the MSSP marketing requirements listed at 42 CFR 425.310.
2. Any Marketing Materials and Activities intended for distribution to potential or actual IHANY Medicare beneficiaries are required to be pre-approved by CMS. There are no exceptions to this requirement.
3. ACO Participants and ACO Providers/Suppliers will submit all Marketing Materials and Activities intended for distribution to IHANY Medicare beneficiaries to IHANY's Director of Communications. The Director of Communications will review such materials and discuss any recommended edits or revisions with the submitting ACO Participant or ACO Provider/Supplier, as applicable.
4. The Director of Communications will review the proposed Marketing Materials and Activities with the IHANY Management Team for approval. Upon approval, the proposed Marketing Materials and Activities will be submitted to CMS for approval by Director of Communications.
5. IHANY Marketing Materials and Activities are deemed approved by CMS and may be used or conducted five (5) business days following their submission to CMS unless IHANY is notified by CMS of disapproval. CMS may issue written notice to IHANY of disapproval of Marketing Materials and Activities at any time.
6. Upon receipt of CMS approval, the Director of Communications will coordinate publication, distribution or initiation of Marketing Materials and Activities with the submitting ACO Participant or ACO Provider/Supplier.

7. IHANY and ACO Participants and ACO Providers/Suppliers will immediately discontinue the use of any Marketing Materials and Activities disapproved by CMS upon notice.
8. IHANY will utilize CMS developed template marketing materials for specific topics as made available by CMS without alteration. IHANY will follow CMS *Guidelines for the MSSP ACO Marketing Materials* when creating Marketing Materials and Activities including:
 - a. Inclusion of required information;
 - b. Prohibition on the use of inaccurate or misleading information including use of prohibited phrases and terms;
 - c. Adherence to Federal Plain Language Guidelines; and
 - d. Required font size.
9. All IHANY Marketing Materials and Activities will comply with the prohibitions on beneficiary inducements as described in IHANY Policy - Beneficiary Inducements. Under no circumstances will IHANY Marketing Materials and Activities be materially inaccurate or misleading or be used in a discriminatory manner or for discriminatory purposes.
10. Marketing Materials and Activities include information required to be publicly reported by IHANY in accordance with CMS requirements. Refer to IHANY Policy - *Public Reporting Requirements* for further information.

DEFINITIONS

ACO Participant(s) means an individual or group of ACO provider(s)/supplier(s) that is identified by a Medicare-enrolled Tax Identification Number (TIN), that alone or together with one or more other ACO participants comprise(s) and ACO, and that is included on the required list of ACO participants. {directly from CFR 425.20}

ACO Provider(s)/Supplier(s) means an individual or entity that is a provider or a supplier, that is enrolled in Medicare, that bills for items or services it furnishes to Medicare fee-for-service beneficiaries under a Medicare billing number assigned to the TIN of an ACO participant, and that is included on the required list of ACO providers/suppliers. {directly from CFR 425.20}

Marketing Materials and Activities per CMS include, but are not limited to: general audience materials such as brochures, advertisements, outreach events, letters to beneficiaries, Web pages, data sharing opt out letters, mailings, social media, or other activities conducted by or on behalf of *IHANY*, or *IHANY* Providers/Suppliers, when used to educate, solicit, notify, or contact Medicare beneficiaries or providers and suppliers regarding the MSSP.

The following beneficiary communications are not considered to be marketing materials and activities by CMS : Certain beneficiary materials that are informational (for example, information regarding care coordination); materials that cover beneficiary-specific billing and claims issues or other specific individual health related issues; educational information on specific medical conditions (for example, flu

shot reminders), written referrals for health care items and services, and materials or activities that do not constitute "marketing" under the HIPAA Privacy Rule (45 CFR 164.501 and 164.508(a)(3)(i)).

POLICY CONTACT

For questions regarding this policy, please contact the Director of Communications.

RELATED PROCEDURES AND OTHER MATERIALS

- 42 C.F.R. § 452.20 Definition of *Marketing materials and activities*
- 42 C.F.R § 452.310 Marketing Requirements
- *CMS Guidelines for the MSSP ACO Marketing Materials*

APPROVALS

Initial Approval: Board of Directors 9/21/15

Subsequent Review/Revision(s):

4/16/2018 - reviewed