

101 **MARKETING**

REVISION DATE: 04/29/2020

EFFECTIVE DATE: October 1, 2019

REFERENCES: Section F3, Contractor Chart of Deliverables; ACOM Policy 101 Attachment A Marketing Attestation Statement; ACOM Policy 101 Attachment B, Marketing Activities Report; A.A.C. R9-22-501 et seq, A.A.C. R9-28-501 et seq, A.A.C. R9-31-501 et seq, 9 A.A.C. 34; 42 CFR 438.10(a), 42 CFR 438.104, 45 CFR 155.20

DELIVERABLES: Marketing Activities Report; Marketing Attestation Statement; Marketing Materials

This policy applies to the Division's Administrative Services Subcontractors (AdSS). This policy establishes guidelines and restrictions for an AdSS regarding marketing activities related to AHCCCS and the Division.

Definitions

- A. Administrative Services Subcontract/Subcontractor - An agreement that delegates any of the requirements of the Contract with the Division, including, but not limited to the following:
1. Claims processing, including pharmacy claims,
 2. Credentialing, including those for only primary source verification (i.e. Credential Verification Organization),
 3. Management Service Agreements,
 4. Service Level Agreements with any Division or Subsidiary of a corporate parent owner,
 5. DDD Subcontracted Health Plan.
- A person (individual or entity) who holds an Administrative Services Subcontract is an Administrative Services Subcontractor.
- B. Dual Eligible Member - For the purposes of this policy, a member who is eligible for both Medicare and Medicaid.
- C. Dual Marketing - Marketing efforts specifically targeting an AdSS enrollee who is eligible for Medicare and Medicaid.
- D. Financial Sponsor - 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.
- E. Health Message - 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.
- F. Health Related - An event that has a direct or indirect health care purpose, and/or it supports or contributes to any AHCCCS initiative or program goal. Giveaway items must have a Health Message or a health care purpose to be considered health related.

- G. Marketing - Any communication from the AdSS to a member not enrolled with the AdSS that can reasonably be interpreted as intended to influence the member to enroll with the AdSS, or to not enroll or disenroll with another Contractor's Medicaid product in 42 CFR 438.104. Marketing does not include communication to any Medicaid member about a Qualified Health Plan, as defined in 45 CFR 155.20.
- H. Marketing Materials - Materials produced in any medium, by or on behalf of the AdSS that can reasonably be interpreted as intended for marketing purposes. This includes general audience materials such as general circulation brochures, AdSS web site and other materials that are designed, intended, or used to increase AdSS membership or establishing a brand.
- I. Member - An eligible individual who is enrolled in AHCCCS, as defined in A.R.S. §36-2931, §36-2901, §36-2901.01 and A.R.S. §36-2981. Also referred to as Title XIX/XXI Member or Medicaid Member.
- J. Potential Member - A Medicaid-eligible recipient who is not yet enrolled with an AdSS; or a member during Annual Enrollment Choice (AEC).
- K. Promotion - Any activity in which marketing materials are given away or displayed where the intent is to increase the AdSS's membership.
- L. Social Networking Applications - Web-based services (excluding the AdSS'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.
- M. Subcontractor -
1. A provider of health care who agrees to furnish covered services to members.
 2. An individual, agency, or organization with which the Contractor has contracted or delegated some of its management/administrative functions or responsibilities.
 3. An individual, agency or organization with which a fiscal agent has entered into a Contract, agreement, purchase order or lease (or leases of real property) to obtain space, supplies equipment or services provided under the AHCCCS agreement.

Policy

As required by 42 CFR 438.104, marketing materials may only be used if they are approved by the Division 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 AdSS is responsible for ensuring its subcontractors comply with this policy. Failure of a subcontracted provider to adhere to this policy may result in penalties to the AdSS.

Marketing Materials, Giveaways, Events, Sponsorships, Press Releases and AdSS and Division Logo and Name Use

A. Materials and Giveaways

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

The AdSS must submit a description and image of marketing materials and marketing items (giveaways) for approval to the Division as required under this policy and as specified in Contract. If approved, the materials and giveaways may be distributed by the AdSS for a period of two years from the date of approval. Any changes or amendments to previously approved materials must also be submitted in advance to the Division for approval. In addition to marketing materials and giveaways, the AdSS must 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 AdSS for a period of two years from the date of approval.

The AdSS may distribute health educational materials without prior Division 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 AdSS specific information related to the Division Integrated Contract (e.g. enrollment, network or information on services) the materials are considered marketing materials and must be submitted for approval.

The AdSS must ensure that:

1. The value of any marketing item (giveaway) to the general public by the AdSS must not exceed \$15.00.
2. Giveaway 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 on the item (e.g. Don't Smoke, Get Your Flu Shot).
3. All marketing materials identify the AdSS as a Division provider and are consistent with the requirements for information to members described in the contract and in Division policies.
4. All marketing materials that have been produced by the AdSS and refer to contract services must specify: "Contract services are funded in part under contract with the State of Arizona Department of Economic Security/Division of Developmental Disabilities".
5. Marketing materials that are distributed by the AdSS must be distributed statewide. Exclusion of any particular group or class of members would be considered to be a discriminatory marketing practice and subject to contract action.
6. The AdSS does not market directly to members eligible for the Division.

7. The AdSS does not encourage or induce a member to select a particular AdSS when completing the application and may not complete any portion of the application on behalf of the potential member. This prohibition covers all situations, whether sponsored by the AdSS, their parent company, or any other entity.

B. Events

The AdSS 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 AdSS must submit a request as specified in contract for prior approval. The submission must include the event name and date with the location and address. The AdSS's participation in events must be substantive; an unmanned booth with handouts is not acceptable. The AdSS is not required to obtain approval from the Division to attend pre-approved events listed in Figure 1 of this policy, with the following exceptions:

1. AdSS pays sponsorship fees,
2. AdSS donates benefits or items (e.g. raffle items, gift baskets, cash), and/or
3. AdSS distributes materials not previously approved by the Division within the last two years.
4. The AdSS may not attend events that are listed in the "Not-Approved" column in Figure 1 of this policy, or any event determined by the Division to not be in the best interest of the State of Arizona.
5. If the AdSS is not certain if an event would qualify as "Pre-Approved," the AdSS must submit a request for approval to the Division prior to the event. The request must 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:
Toothbrush Approved 12/10/17*

We will be handing out the toothbrush kits as the Roosevelt Clinic has been stressing dental hygiene this month. (Health related purpose)

Figure 1 – Pre-Approved and Not Approved Events

PRE-APPROVED HEALTH RELATED EVENTS	NOT-APPROVED
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 AdSS is contracted	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)	AdSS Event that is created and sponsored by the AdSS or through its affiliates for Division’s members not enrolled with the AdSS, or for the general public
Immunization Clinics	
Senior Events	
Shopping Mall Events	
AdSS Event that is created and sponsored by the AdSS for its own members only	

C. Sponsorships

The AdSS 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 (the dollar amount should be broken down and listed individually by each line of business, as applicable), and either a copy or description of any materials (including websites) on which the AdSS's name or logo will appear prior to production.

D. Press Releases

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

E. Contractor Logos and Name Inclusion

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

Restrictions

The following restrictions apply to all marketing activities (42 CFR 438.104).

A. The following must **not** be allowed:

1. Solicitation of any individual, whether directly or indirectly, (e.g., face-to-face, door-to-door, over the telephone, via email or text, or other cold-call marketing activities),
2. References to a competing AdSS,
3. Promotional materials, incentives, or any other activity to influence enrollment in conjunction with the sale or offering of any private insurance,
 - a. For the purposes of this policy, Qualified Health Plans are not considered private insurance, and
 - b. The AdSS may discuss its affiliated Qualified Health Plan in promotional materials; however, the AdSS is a separate legal entity from all other affiliated health plans and is therefore subject to restrictions on the use of Protected Health Information (PHI).
4. Television advertising,
5. Direct mail advertising,
6. Social Networking Applications (see AdSS Policy Manual, Policy 425 for requirements regarding social networking),
7. Marketing of non-mandated services,

8. Utilization of the word “free” in reference to covered services,
 9. Listing of providers in marketing materials who do not have signed contracts with the AdSS,
 10. Use of the Arizona Department of Economic Security, Division of Developmental Disabilities logo or AHCCCS logo,
 11. Inaccurate, misleading, confusing or negative information about the Division or the AdSS; and any information that may defraud members or the public,
 12. Discriminatory marketing practices as specified in A.A.C. R9-22-501 et seq, A.A.C. R9-28-501 et seq, A.A.C. R9-31-501 et seq.
 13. AdSSs providing services where its enrollment is capped to prohibit members from selecting the AdSS may not engage in marketing activities but may engage in outreach and retention activities with its current members.
 14. Marketing materials cannot contain any assertion or statement (whether written or oral) that the member must enroll with the AdSS to obtain benefits or to not lose benefits, and,
 15. Marketing materials cannot contain any assertion or statement (whether written or oral) that the AdSS is endorsed by CMS, the Federal or state government, or a similar entity.
- B. Any activities, materials, or mediums in violation of this policy are subject to administrative actions, regardless of previous approval or terms of privately held contractual agreements.
- C. The Division reserves the right to impose additional restrictions.

Dual Eligible Marketing

Dual Marketing focuses on enrollment in the AdSS’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 AdSS to only market to individuals enrolled in its ALTCS plan. Marketing to dual eligible AdSS enrollees may include print advertisements, radio advertisements, billboards, bus advertising, and television.

- A. In the case of marketing materials for dual eligible enrollees the process will be as follows:

The Division does not review for approval dual marketing materials that have been approved by CMS and/or that do not include reference to Division benefits and/or service information. However, all dual marketing materials that have not been approved by CMS and/or include reference to Division benefits and/or service information require submission to the Division as specified in Section F3, Contractor Chart of Deliverables. While the Division may accept CMS approval of dual marketing materials as sufficient for distribution of materials, the Division retains and reserves the right to review before or after the fact, materials that have received CMS approval.

- B. The AdSS must adhere to the following regarding use of billboards that use the terms 'Medicaid' or 'AHCCCS':
1. Limited to two in each urban county (Maricopa and Pima), and
 2. Limited to one in each rural county.

AdSS Responsibilities

- A. The AdSS 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.
- B. The AdSS must 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 the Division for approval as indicated above.
- C. The AdSS CEO (or designee) must sign and submit to the Division, ACOM 101, Attachment A, Marketing Attestation Statement, as adopted by the Division and as specified in Section F3, Contractor Chart of Deliverables. The AdSS's Attestation Statement will address the compliance of its subcontracted health plans with the requirements of this policy.
- D. The AdSS must submit a Marketing Activities Report of the previous month's marketing activities as specified in Section F3, Contractor Chart of Deliverables. This includes events in which the AdSS 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 AdSS's Report will address marketing activities of its subcontracted health plans.

DDD Communications will review the AdSS's monthly submission to determine if the AdSS' participation in the events was in compliance with this policy. If the Division determines a violation has occurred, the AdSS may be subject to sanctions. Failure to disclose an event attended may also result in Administrative Action.

- E. Submission Requirements

All marketing materials including, giveaways, event requests, sponsorships and press releases, and dual eligible marketing materials must be submitted as individual requests for approval at least 21 days prior to dissemination as specified in Contract. Section F3, Contractor Chart of Deliverables. Bulk submissions (i.e. submissions that include more than one event, sponsorship, press release etc.) are not permitted with the exception of giveaway items. Giveaway items shall be submitted for approval separately from any event or sponsorship submission and may consist of more than one giveaway. All submissions shall be complete and include all corresponding documents.

When a 21-day notice is not possible, the AdSS may request an expedited review. The AdSS must follow the submission requirements as noted above but also submit notification of the expedited request to the DDD Communications mailbox. The expedited notification must be clearly marked as expedited and also indicate the reason for the shortened timeframe.

Division approval will only apply to the form of communication or specific date described with the submission. Any substantial modifications of previously approved marketing materials must be resubmitted for approval.

Pursuant to 42 CFR 438.104, DDD Communications will consult with the Arizona State Medicaid Advisory Committee (SMAC) in reviewing submitted marketing materials.

The AdSS may request a reconsideration of any DDD Communications decision by submitting a written request for reconsideration to the DDD Communications Unit and following the submission requirements for marketing materials as specified in Contract. The AdSS may provide information in support of its request for reconsideration.

Administrative Action

Any violation of this policy may result in Administrative Action, including but not limited to, sanctions as specified in Division Operations Policy Manual, Policy 408.