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STATUTORY MINOR CORRECTION

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CHAPTER 410
OREGON HEALTH AUTHORITY
HEALTH SYSTEMS DIVISION: MEDICAL ASSISTANCE PROGRAMS

FILING CAPTION: OAR 410-141-3575 numbering correction

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AGENCY ATTESTS THE FOLLOWING CHANGES HAVE BEEN MADE, ACCORDING TO ORS 183.335(7):

Changing a rule's title or correcting a rule's internal section numbering as allowed by ORS 183.360(2)

AMEND: 410-141-3575

RULE TITLE: MCE Member Relations: Marketing

RULE SUMMARY: Correcting numbering in Section (1)

RULE TEXT:

(1) The following definitions apply for purposes of OAR 410-141-3575 through 410-141-3585:

(a) “Alternate Format” means any alternate approach to presenting print information to an individual with a disability. This term includes, at a minimum, the types of alternate formats defined under the Americans with Disabilities Act (ADA) and 45 CFR Part 92, and shall include: braille, large (18 point) print, audio narration, oral presentation, electronic file, sign language interpretation, and sighted guide;

(b) “Cold-call Marketing” means any unsolicited personal contact with a potential member for the purpose of marketing by the MCE;

(c) “Marketing” means any communication from an MCE to a potential member who is not enrolled in the MCE that can reasonably be interpreted as intended to compel or entice the potential member to enroll in that particular MCE;

(d) “Marketing Materials” means materials that are produced in any medium by or on behalf of an MCE and that can reasonably be interpreted as intended to market to potential members;

(e) “Outreach” means any communication from an MCE to any audience that cannot reasonably be interpreted as intended to compel or entice a potential member to enroll in a particular MCE. Outreach activities include, but are not limited to, the act of raising the awareness of the CCO, the MCE’s subcontractors and partners, and the MCE contractually required programs and services; and the promotion of healthful behaviors, health education and health related events. For full benefit dual eligible (FBDE) members, outreach to provide information about opportunity to align Medicare and Medicaid benefits, or CMS approved Default or Simplified enrollment for newly Medicare eligible member in the CCO regarding MA or DSNP, is allowable subject to OHA or CMS materials review.

(f) “Outreach Materials” means materials that are produced in any medium, by or on behalf of an MCE that cannot reasonably be interpreted as intended to compel or entice a potential member to enroll in a particular MCE;

(g) “Potential Member” means, as defined in OAR 410-141-3500, a person who meets the eligibility requirements to enroll in the Oregon Health Plan but has not yet enrolled with a specific MCE;

(h) “Prevalent Non-English Language” means all non-English languages that are identified during the eligibility process as the preferred written language by the lesser of:
(A) Five percent of the MCE’s total OHP enrollment; or
(B) One thousand of the MCE’s members;
(i) “Readily Accessible” means electronic information and services that comply with modern accessibility standards such as section 508 guidelines, section 504 of the Rehabilitation Act, and W3C’s Web Content Accessibility Guidelines (WCAG) 2.0 AA and successor versions.
(j) “Written Member Materials” means informational and educational communications for members or potential members that are produced by or on behalf of an MCE in any written medium, including but not limited to: letters, brochures, guides, scripts, email, and text messaging. All written member materials must comply with the Authority’s formatting and readability standards, as described in OAR 410-141-3585 and 42 CFR § 438.10, and be written in plain language sufficiently clear that a layperson could understand the information.
(2) MCEs shall comply with 42 CFR §§ 438.10, 438.100 and 438.104 to ensure that before enrolling OHP clients, the MCE provides accurate oral and written information that potential members need to make an informed decision on whether to enroll in that MCE. MCEs shall distribute the materials to its entire service area as indicated in its MCE contract. The MCEs may not:
(a) Distribute any marketing materials without first obtaining state approval;
(b) Seek to compel or entice enrollment in conjunction with the sale of or offering of any private insurance; and
(c) Directly or indirectly engage in door to door, telephone, or cold-call marketing activities.
(3) The following outreach to members or potential members are expressly permitted:
(a) The creation of name recognition by an MCE. Permissible methods for creating name recognition include, but are not limited to, brochures, pamphlets, newsletters, posters, fliers, websites, bus wraps, bill boards, web banners, health fairs, or health-related events;
(b) An MCE or its subcontractor’s communications that express participation in or support for an MCE by its founding organizations or its subcontractors, so long as the communications do not constitute an attempt to compel or entice a client’s enrollment;
(c) The following communications related to full benefit dual-eligible (FBDE) members with affiliated or contracted MA or DSNP plans, and member’s Medicare and Medicaid providers, as long as they do not constitute an attempt by the MCE to influence client enrollment:
(A) Communications to notify full benefit dual-eligible (FBDE) members of opportunities to align MCE-provided benefits with Medicare Advantage or Special Needs Plans or access ICC services;
(i) Provision of information about CCO’s affiliated Medicare Advantage Plan or Dual Special Needs Plan, contact information to inquire about the plan or provider network, and opt-in enrollment form;
(ii) Provision of aligned Medicare Advantage or Dual Special Needs Plan Simplified or Default enrollment letters, and CMS approved communication materials for newly eligible members.
(B) Improving coordination of care through mechanisms such as referral to LTSS assessment with DHS or providers of Home and Community Based Services, interdisciplinary care conferences, and use of HIE and event notifications;
(C) Communicating with providers serving full benefit dual-eligible (FBDE) members about unique care coordination needs or member needs such as ICC services, service authorizations, goals to ensure preventive screenings and assessments are scheduled as recommended, auxillary aids and services or interpreter services; or
(D) Streamlining communications to the full benefit dual eligible (FBDE) member to improve coordination of benefits including provision of integrated member materials, i.e. handbooks, provider directories, summary of Medicare-Medicaid benefits, and ID cards for members with aligned MA or DSNP and CCO enrollment.
(4) MCEs shall update plan access information with the Authority on a monthly basis for use in updating the Authority’s availability charts. The Authority shall confirm information before posting availability charts.
(5) MCEs and when applicable, the aligned Medicare Advantage or Dual Special Needs Plan have sole accountability for producing or distributing materials following Authority approval.

(6) MCEs shall comply with the Authority's marketing materials guidelines or other requirements for the submission, approval, review and correction of marketing materials or other communications with members or potential members. MCEs shall participate, as required, in development of guidelines or other requirements with the Authority through a transparent public process, including stakeholder input. The guidelines include, but are not limited to:

(a) A list of communication or outreach materials subject to review by the Authority;

(b) A clear explanation of the Authority's process for review and approval of marketing materials;

(c) A marketing materials submission form to ensure compliance with MCE marketing rules; and

(d) An update of plan availability information submitted to the Authority on a monthly basis for review and posting.

STATUTORY/OTHER AUTHORITY: ORS 413.042, 414.615, 414.625, 414.635, 414.651

STATUTES/OTHER IMPLEMENTED: ORS 414.610 - 414.685