



CENTER FOR CONSUMER INFORMATION AND INSURANCE OVERSIGHT

Date: February 21, 2014

Subject: Outreach by Medicaid Managed Care Contractors and Health Insurance Issuers to Former Enrollees

Medicaid managed care organizations (MCOs) provide coverage of Medicaid benefits to Medicaid beneficiaries on a risk basis, and have been in existence since before the enactment of the Affordable Care Act. Many individuals who were once enrolled in a Medicaid managed care plan may no longer be eligible for Medicaid as determined by a State. Many issuers that contract with the State as MCOs are now involved in offering Qualified Health Plans (QHPs) on the Federally-facilitated Marketplace or in State-based Marketplaces offering coverage to individuals who were previously uninsured.

Q. May an issuer with a Medicaid MCO contract reach out to former Medicaid MCO enrollees who have been disenrolled by the state due to loss of Medicaid eligibility, to assist them in enrolling in health coverage offered by the issuer through the Marketplace (or, if they are Medicaid eligible again, through the issuer’s MCO contract)?

A. Yes. An issuer with a Medicaid MCO contract can reach out to former Medicaid MCO enrollees to assist them in enrolling in health coverage, provided it does not violate applicable marketing rules prohibiting discrimination, e.g., doesn’t attempt to enroll only healthy individuals. An issuer with a Medicaid MCO contract also would not be in violation of the marketing restrictions of the HIPAA Privacy Rule in sending communications to its former enrollees about their options for health care coverage through Medicaid or other government programs and government sponsored programs, and/or their options for coverage it offers, including through the Marketplace. Under the Privacy Rule, communications about government programs and government-sponsored programs and about a plan’s own health plan products are not considered “marketing.”

This analysis also applies to health insurance issuers with respect to their former enrollees (*i.e.*, providing information regarding government programs, government-sponsored programs, and the issuer’s own health plan products available through the Marketplace) in addition to Medicaid managed care organizations.

This activity by a Medicaid MCO contractor would not violate Medicaid marketing rules at 42 CFR 438.104 because the activity is not marketing to enrolled Medicaid beneficiaries. However, a Medicaid MCO may not reach out to current Medicaid beneficiaries.