

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Center for Beneficiary Choices
7500 Security Boulevard, Mail Stop C4-23-07
Baltimore, Maryland 21244-1850



DATE: September 1, 2006

TO: Medicare Advantage Organizations, Medicare Advantage Prescription Drug Plan Sponsors, and Prescription Drug Plan Sponsors

FROM: David A. Lewis, Acting Director, Medicare Advantage Group
Cynthia Tudor, Ph.D., Director, Medicare Drug Benefit Group

SUBJECT: Distribution of Marketing Materials Outside the Service Area

The Centers for Medicare & Medicaid Services (CMS) would like to remind all organizations that marketing activities such as distribution of marketing materials and enrollment is only permitted within the defined service area. Therefore, an organization is prohibited from advertising outside its defined service area unless such advertising is unavoidable. For situations in which this cannot be avoided (e.g. advertising in print or broadcast media with a national audience or with an audience that includes some individuals outside the service area, such as a MSA (Metropolitan Statistical Area) that covers two regions, organizations are required to clearly disclose their service area.

Regulations at 42 CFR §422.80(e)(iv) and §423.50(f)(iv) prohibit MA organizations and Part D sponsors from engaging in activities that could mislead or confuse Medicare beneficiaries or misrepresent the MA organization or Part D sponsor (or its Part D plan). Marketing activities outside of the U.S. would have the potential consequence of encouraging enrollment by beneficiaries who do not primarily reside in the MA plan's or Part D sponsor's service area. Additionally, Medicare Parts A, B, or D benefits may not be provided by non-certified providers outside of the United States. The "basic benefits" can only be provided through providers of services that are Medicare certified. Other providers must meet applicable requirements of Title 18 and Part A of Title XI of the Social Security Act. See 42 CFR 422.204(b)(3).

All marketing activities are subject to CMS review and oversight. Any marketing activities outside of an organization's/plan's defined service are the basis for corrective action.

Please contact your Regional Office if you have any questions concerning this prohibition.