



Medicare Shared Savings Program
**ACCOUNTABLE CARE
ORGANIZATION MARKETING
MATERIALS**

Guidance

January 2023

Version #7

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MEDICARE
SHARED SAVINGS
PROGRAM

Revision History – Version 7

TITLE OF SECTION & REVISION/CHANGES DESCRIPTION (since previous version)	LINK TO AFFECTED AREA
Updated background section to include polices from the CY 2023 PFS Final Rule	Section 2
Modified language to reflect a retrospective marketing material reviews process.	Section 3
Updated Section to include language regarding related media inquiries.	Section 3
Modified this section to reflect the Retrospective Review Strategy implemented January 1, 2023	Section 4
Updated to reflect the retrospective review process.	Section 4.1
Added links to Final Rule and Fact Sheet	Section 4.2
Updated to reflect the retrospective review process and compliance.	Section 4.3
Updated guidance in Section 4.3 to reflect new “Does Not Constitute a Marketing Material” disposition.	Section 4.3
Clarified the marketing material submission process by moving process information from 4.3.1 to 4.3 and updating the language for clarity.	Section 4.3
Relocated “Contact Information” and “Writing Style and Font Size” details to Appendix A, which was renamed “Marketing Best Practices.”	Appendix A

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1 Executive Summary

The purpose of this document is to describe the requirements that an Accountable Care Organization (ACO) participating in the Medicare Shared Savings Program (Shared Savings Program) must follow to meet Shared Savings Program marketing regulations. These requirements are pursuant to policies established by the Shared Savings Program and are codified at [42 Code of Federal Regulations \(CFR\) part 425](#).

The term “marketing materials and activities,” as defined in the program regulations, is important for understanding the Shared Savings Program and this guidance document:

Marketing materials and activities (45 CFR § 425.20) include but are not limited to general audience materials such as brochures, advertisements, outreach events, letters to beneficiaries, webpages, mailings, social media, or other activities conducted by or on behalf of the ACO, ACO participants, or ACO providers/suppliers participating in the ACO, when used to educate, solicit, notify, or contact Medicare beneficiaries or providers and suppliers regarding the Shared Savings Program.

The following beneficiary communications are not marketing materials and activities:

Certain informational materials customized or limited to a subset of beneficiaries; materials that do not include information about the ACO, its ACO participants, or its ACO providers/suppliers; materials that cover beneficiary-specific billing and claims issues or other specific individual health-related issues; educational information on specific medical conditions (e.g., flu shot reminders); written referrals for health care items and services; press releases; and materials or activities that do not constitute “marketing” under [§ 164.501](#) and [§ 164.508\(a\)\(3\)\(i\)](#).

In addition, ACO press releases are not considered marketing materials.

ACOs can access marketing material guidance via the [Marketing and Beneficiary Education Toolkit](#), located within the Program Resources section of the Knowledge Library tab in the [ACO Management System \(ACO-MS\)](#).

ACOs are subject to marketing requirements beginning with their acceptance into the Shared Savings Program. ACOs, ACO participants, ACO providers/suppliers, and/or other individuals or entities performing functions or services related to ACO activities, as applicable, are required to comply with the program’s marketing requirements.

2 2023 Final Rule Changes

In the CY 2023 PFS Final Rule, CMS amended regulations at [§ 425.310](#) and eliminated the submission and approval of marketing materials and activities after a 5-day review period. Beginning January 1, 2023, ACOs are no longer required to submit marketing materials prior to use. CMS continues to require that ACOs comply with all Shared Savings Program regulations, including marketing material content requirements that appear at [§ 425.310\(c\)](#).

3 Marketing Material Reviews

ACOs are no longer required to submit materials for CMS approval prior to use. Instead, CMS requires the ACOs retain all marketing materials and make them available for CMS review through [ACO-MS](#) upon request. ACOs are responsible for ensuring that all material meets the Shared Savings Program marketing requirements and is consistent with all other relevant

Shared Savings Program requirements. CMS retains the authority to issue compliance actions if an ACO does not comply with marketing requirements.

If CMS determines that marketing materials and activities do not comply with the requirements, CMS will issue a notice of disapproval. ACOs, ACO participants, ACO providers/suppliers, and other individuals or entities performing functions or services related to ACO activities must discontinue use of any marketing materials or activities disapproved by CMS. Failure to comply with marketing requirements may result in a compliance action set forth in [§ 425.216](#), termination under [§ 425.218](#), or both.

4 Marketing Material Requirements

This section provides guidance to ACOs, ACO participants, and ACO providers/ suppliers on the requirements of marketing materials.

Section 1899(b)(2)(H) of the Act requires ACOs to demonstrate that they meet patient-centeredness criteria. An important aspect of patient-centeredness is patient engagement and transparency. Therefore, the Shared Savings Program has specific requirements surrounding marketing. These include requirements that materials distributed to beneficiaries must not misrepresent Shared Savings Program policies or suggest that CMS endorses any given ACO, its ACO participants, or its ACO providers/suppliers.

4.1 Marketing Materials and Activity Requirements

Marketing materials and activities¹ include, but are not limited to, general audience materials such as brochures, advertisements, outreach events, letters to beneficiaries, webpages, mailings, social media, or other activities conducted by or on behalf of the ACO, ACO participants, or ACO providers/suppliers participating in the ACO, when used to educate, solicit, notify, or contact Medicare beneficiaries or providers and suppliers regarding the Shared Savings Program.

All Shared Savings Program ACO marketing materials and activities must comply with prohibitions on beneficiary incentives. For additional information regarding beneficiary incentives, refer to Section 4.2 of this document.

In addition, ACOs cannot use materials, language, and activities in a discriminatory manner or for discriminatory purposes. Furthermore, the content of the materials cannot be materially inaccurate or misleading. CMS reserves the right to request, review and disapprove marketing materials, website language, or other materials or activities for use if they are false or misleading. If CMS disapproves an ACO's marketing materials, ACOs, ACO participants, ACO providers/suppliers, and other individuals or entities performing functions of services relations to ACO activities must discontinue the use of the disapproved marketing materials or activities immediately.

CMS provides templates for the *Beneficiary Information Notification, Poster, SNF 3-Day Rule Waiver Notice, Voluntary Alignment Beneficiary fact sheet*, and *Voluntary Alignment ACO fact sheet*. For all other materials, the ACO should take note of the guidelines outlined in this document when creating and using marketing materials. If an ACO is found to be out of compliance with these requirements, the ACO may be subject to compliance actions set forth in

¹ Refer to [§ 425.20](#) for a more detailed definition of which documents and activities are identified as marketing materials under the Shared Savings Program. ACOs can review the marketing requirements for the Shared Savings Program at [§ 425.310](#).

the Shared Savings Program regulations, including failure to comply with this section will subject the ACO to the penalties such as a corrective action plan (CAP) set forth in [§ 425.216](#), or termination from the program under [§ 425.218](#), or both.

If an ACO's marketing materials and activities relate both to the Shared Savings Program and to another Medicare program (e.g., Medicare prescription drug coverage), the ACO must follow each separate Medicare program's marketing review policies and procedures.

4.1.1 Websites

ACOs are required to have a webpage for public reporting and may choose to have a website for marketing. If an ACO chooses to have a website for marketing, the ACO must enter the website URL in the ACO Webpage field in the Public Information section under the Agreement Details subtab in ACO-MS. If an ACO makes a change to the Webpage field or URL, they must update the Public Information section under the Agreement Details subtab in ACO-MS, as may be necessary.

If an ACO terminates its ACO Participation Agreement with the Shared Savings Program, it should shut down the marketing website by the termination effective date specified in the Termination Acknowledgement Notice that CMS sends to the ACO.

4.1.2 Social Media and Multimedia requirements

All materials an ACO shares on social media or online are subject to applicable marketing requirements in [§ 425.310](#) and are subject to CMS review upon request. These requirements also apply to Shared Savings Program outreach materials used on websites and on social media platforms such as Facebook and Twitter; however, any posts made by others (e.g., followers, beneficiaries) are not subject to CMS marketing rules and regulations.

ACOs may use QR codes on marketing materials and ACOs may create materials using different types of media (e.g., CDs or DVDs).

4.2 Beneficiary Incentives and Prohibitions

CMS policies [§ 425.312 \(b\)](#) to allow certain ACOs participating in the Shared Savings Program to offer incentive payments to encourage assigned beneficiaries to obtain medically necessary primary care services. Under these policies, ACOs participating in certain two-sided models may apply to establish and operate a BIP that provides an incentive payment to each assigned beneficiary for each qualifying primary care service received.

According to [§ 425.304\(c\)\(4\)\(iv\)](#), the BIP may not be the subject of marketing materials and activities, including advertising or soliciting any beneficiary or potential patient whose care is paid for in whole or in part by a federal health care program.

IMPORTANT

Except as provided for as part of an approved BIP or as otherwise permitted by law, ACOs, ACO participants, ACO providers/suppliers, and other individuals or entities performing functions or services related to ACO activities are prohibited from providing gifts or payments to beneficiaries as inducements for receiving services from ACO participants or ACO providers/suppliers, or for remaining in the ACO as described in [§ 425.304](#).

4.3 Inaccurate or Misleading Information/ Language

ACOs must not develop or distribute marketing materials and activities that include materially inaccurate or misleading information. This includes but is not limited to language suggesting the following:

- Beneficiaries must see providers/suppliers only within the ACO or are prohibited in any way from seeing providers/suppliers outside of the ACO.
- Beneficiaries must enroll in or participate in an ACO. ACOs must be clear that it is the provider/supplier and not the beneficiary who participates in the ACO.
- CMS endorses one ACO over another.

The Marketing Material Best Practices guide, located in [Appendix A](#), offers alternative phrases that ACOs may consider when developing Shared Savings Program marketing materials and activities, as well as details on best practices for communicating Contact Information, Writing Style, and Font Size, as well as a Quick Reference Language List.

Appendix A: Marketing Materials Best Practices

Contact Information

When ACOs use marketing materials and activities developed for Medicare beneficiaries, such as brochures, websites, and newsletters, the following information should be included:

- Contact information for beneficiaries with general questions about the Shared Savings Program:
 - Medicare contact information²
 - 1-800-MEDICARE (1-800-633-4227)
 - Teletypewriter users should call 1-877-486-2048
 - ACO provider/supplier contact information
- Contact information for the ACO (and the participating ACO provider/supplier, if applicable) that is sending the information.

Writing Style and Font Size

All ACO marketing materials should follow the federal plain language guidelines. The guidelines are available at www.plainlanguage.gov. ACOs should always strive to produce materials using clearly legible fonts and font sizes. All text included on materials, including footnotes, should be written in a font size equivalent to or larger than 12-point Times New Roman or 11-point Calibri.

Items to which this guidance does not apply include ACO logos and any preapproved templates within the Shared Savings Program [Marketing and Beneficiary Education Toolkit](#).

For more information on 508 compliance, please refer to the [Creating Accessible Products webpage](#).

Quick Reference Language List

ACOs must not develop or distribute marketing materials and activities that include materially inaccurate or misleading information. ACOs should refrain from using the phrases or terms below on any marketing materials. Please use a suggested alternative.

² Provide the 1-800-MEDICARE number to beneficiaries with general Shared Savings Program questions. The number should not be used for ACO-specific programs such as care coordination services.

Phrase or term to avoid	Suggested alternative
Manage, managed care, or care management	Coordinate, coordinated care, or care coordination
Beneficiaries “enroll”/“enrollment”	Providers “participate”
“You’ve been selected to participate”	“Your provider has chosen to participate”

We recommend ACOs avoid using the sensitive words/terms/phrases below that do not reflect more widely used and accepted terminology. Instead, please use a suggested alternative.

Sensitive words/terms/phrases to avoid	Suggested alternative
“Suffer from” diabetes or other disease	“Live with” diabetes or other disease
Medicare (when communicating about the Medicare Shared Savings Program operating under FFS)	Traditional Medicare or Original Medicare
Alcohol or substance abuse	Alcohol or drug treatment; substance abuse disorder
Opt out of data sharing	Decline to share your health care information
“Triple aim” objective	Three objectives or Three-part aim
Medicare ACO, MSSP	Medicare Shared Savings Program ACO, Shared Savings Program ACO
Patient or members	Medicare beneficiaries
Contract (when describing the Shared Savings Program agreement with CMS)	Participation Agreement
“As the only ACO”	“Our ACO”
Better/superior/excellent/etc. (when describing the ACO or its type of service)	Since these terms are subjective, CMS prefers that these types of words be avoided
CMS (when communicating with beneficiaries about the Agency)	Medicare
Provider members	Participating providers, ACO participants
Medicare patients/recipients	Medicare fee-for-service beneficiaries or People with Original Medicare