

NYS DOH RELEASES GUIDANCE ON FISCAL INTERMEDIARY ADVERTISING

Home Care Alert
September 26, 2018

Today, the New York Department of Health released guidance concerning fiscal intermediaries' advertising review and approval. The Guidance document is available here. As we had previously reported, the 2018 New York Budget Bill required all fiscal intermediaries to submit all advertising materials for approval to the DOH before the advertising material was used. The Budget Bill also established, for the first time, penalties for fiscal intermediaries (FIs) that disseminated unauthorized, false, or misleading advertisements in two or more promotional campaigns/outreach actions.

The key provisions of the guidance are as follows:

1. First, advertising is defined in the guidance as “any material produced in any medium that can reasonably be interpreted as an effort to market the FI's services to medical assistance (Medicaid) beneficiaries.”
2. Inaccurate descriptions of the CDPAP program or the roles and responsibilities of CDPAP participants, designated representatives, FIs, and/or aides will be considered false or misleading. False or misleading advertising will not be approved, and will be considered an advertising violation if disseminated. If, however, the DOH authorizes an advertisement, it means the DOH determined at that time that it is not false or misleading.
3. Advertising activities may not discriminate based on a potential beneficiary's health status, prior health service use, or need for future health care services. In addition, advertising must not discriminate against any population or socioeconomic group.
4. FIs may not conduct “cold call” telephone solicitations. ***Door-to-door solicitation is also prohibited.***
5. FIs may not offer material or financial gain to Medicaid beneficiaries as an inducement to participate in CDPAP and/or utilize a specific FI. Specifically, providers and plans may only:
 - A. Make statements in advertising that are consistent with the roles and responsibilities of the FI and CDPAP.
 - B. Offer only nominal gifts, in accordance with current federal guidance, regardless of a beneficiary's intent to utilize the FI.

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6. Advertising materials intended to be used on or after November 1, 2018 must be submitted to DOH for review. DOH will have 30 days to review the submission. The 30-day review period will begin on the first day following the DOH email acknowledging receipt of the advertising materials.

7. Advertising materials that consist of a website with links to electronic/digital attachments must be submitted to DOH in English and in hard-copy format, comprising of a hard-copy page for each webpage. In its submission for advertising, the FI must identify the intended types of media (e.g., billboards, posters, print radio, digital, etc.) and target audience (e.g., providers, caregivers, family members, etc.).

8. Advertising materials used prior to November 1, 2018 are not required to be submitted to DOH for review. Such materials may, however, be voluntarily submitted to DOH for review until December 31, 2018 for an “FI Advertising Amnesty.”

If you have any questions about this the DOH’s guidance document and how it will affect your fiscal intermediary’s advertising or promotions, please contact any member of our Home Care Group.