

# REWARDS AND INCENTIVES

Kelli Back  
Law Offices of  
Mark S. Joffe

# HISTORY OF CMS REGULATION OF REWARDS AND INCENTIVES

- Initially CMS offered broad flexibility for RI programs.
- Over time CMS substantially narrowed RI program flexibility and limited programs principally to Medicare preventive care services.
- Effective July 22, 2014, newer regulations (§422.134) and implementing policies provide Medicare Advantage organizations (MAOs) ***great flexibility*** in offering RI programs.

# CMS' PERSPECTIVE ON REWARDS AND INCENTIVE PROGRAMS

- Promoting RI programs is aligned with CMS' value-based purchasing goals including member engagement in their health maintenance and improvement.
- CMS still has issues/concerns regarding RI programs:
  - Use of RI programs for marketing.
  - Limited practical experience.
  - Looking for marketplace experience and research studies.

# BROAD RANGE OF POTENTIAL RI PROGRAMS

- MA organizations may create one or more programs consistent with the CMS regulations “that provide rewards and incentives to enrollees in connection with participation in activities that focus on promoting improved health, preventing injuries and illness, and promoting efficient use of health care resources.”
- Currently applies to Part C only, but CMS is considering whether it should be expanded to Part D and evaluating whether that would require a regulatory change,

# HEALTH RELATED SERVICES AND ACTIVITIES

- **Health related services and activities associated with an RI Program may include, for example,**
  - utilization of a particular service(s) or preventive screening benefit(s)
  - adherence to prescribed treatment regimens,
  - attending education/self-care management classes
  - making and keeping appointments with the doctor

# NON-DISCRIMINATION

- RI programs must not discriminate against enrollees based on race, gender, chronic disease, institutionalization, frailty, health status or other impairments.
- Must be designed so that all enrollees are able to earn rewards.
  - Must assure availability to non-Internet users
  - Must provide alternatives or access to institutionalized individuals
    - E.g., an RI Program in which participants earn a reward for participating in an exercise class must offer an alternate method of fulfilling an exercise activity to those individuals who are unable to attend the class, due to institutionalization, lack of transportation, or being wheelchair bound.

# NON-DISCRIMINATION

- RI programs may be disease-specific – as long as all individuals in the targeted category can participate.
- Can be targeted to beneficiaries that evidence based medicine says are likely to benefit from the service or activity.
- Rewards cannot be based on outcomes (example: weight loss).

# LIMITATIONS ON REWARDS AND INCENTIVES

- Rewards must be tangible and have a value that may be expected to affect enrollee behavior.
  - Charitable contributions not considered tangible.
  - Lotteries and drawings not considered tangible.
- Rewards may not:
  - Be offered in the form of cash or other monetary rebates (includes reductions in plan cost sharing or premiums)
    - Gift cards from particular retailers that cannot be converted to cash are fine and frequently used. CMS encourages MAOs to offer a choice of gift cards to account for differences in enrollees' preferences and accessibility of retailers.
  - Be used to target potential enrollees
  - Exceed the value of the health-related service or activity itself.

# LIMITATIONS ON REWARDS AND INCENTIVES

**The reward or incentive must be offered in connection with the entire service or activity.**

- CMS clarified meaning of standard:
  - Tied to the prohibition on the reward or incentive exceeding the value of the service.
- MAOs are expected to reasonably define the scope of the “entire service or activity.”
- MAOs will assign a value to the entire service or activity.
- CMS allows an activity to be subdivided into units, such as individual classes. For example, if an MAO offered a series of weight-loss/nutrition classes, the entire activity could be broken down into individual classes where a reward could be given for attending each class. But the sum of the rewards **could not exceed the value of the entire service.**

# LIMITATIONS ON REWARDS AND INCENTIVES

- Must comply with all relevant fraud and abuse laws, including, when applicable, the anti-kickback statute and civil money penalty prohibiting inducements to beneficiaries.
- Fraud and abuse law contains restrictions related to offering gifts and other inducements to beneficiaries:
  - Prohibits incentives to influence the choice of provider. (prohibition does not extend to incentives to select a health plan).
  - Be wary of incentive arrangements that promote the use of a single provider.
- Federal anti-kickback law applies.

# REWARDS AND INCENTIVES

- No caps on the frequency in which they can be provided or total amount that can be earned.
- Cannot use RI to incent completion of a federally mandated survey (e.g., CAHPS)
- Allowing beneficiaries to earn points or tokens to “purchase” incentives is allowable but the prohibition not to exceed the value of the services still applies.

# **MARKETING REWARDS AND INCENTIVE PROGRAMS**

- Lifts previous marketing prohibition to non-members. MAOs may include information about RI programs in marketing materials
  - Must be provided to all current and prospective enrollees.
  - No discrimination in dissemination of marketing materials.
- Marketing of RI programs must be done in conjunction with marketing of plan-covered benefits.
- RI “items” may not be offered to potential enrollees. Nominal gifts as part of promotional activities are distinct from RI Programs and limitations apply.

# RI PROGRAMS - REPORTING

- Do you have a Rewards and Incentives Program(s)?
- If yes, please list each individual Rewards and Incentives Program you offer and provide information on the following:
  - What health related services and/or activities are included in the program?
  - What reward(s) may enrollees earn for participation?
  - How do you calculate the value of the reward?
  - How do you track enrollee participation in the program?
  - How many enrollees are currently enrolled in the program?
  - How many rewards have been awarded so far?

# BID ISSUES

- RI programs are not a benefit.
- They should be included in the bid as a non-benefit expense.
- They should not be entered in the Plan Benefit Package.

# FINAL NOTE

- Page 8 of the Annual Announcement and Call Letter includes a Request for Information.
- CMS notes that the agency wishes to use transparency, flexibility, program simplification and innovation to transform the MA and Part D programs for Medicare enrollees to have options that fit their individual health needs.
- CMS requests clear and concise proposals that include data and specific examples that could be implemented within the law to increase benefit flexibility, innovation and more affordable plan choices for beneficiaries.
- Opportunity to ask for additional flexibility for RI programs, including use of lotteries or charitable contributions as rewards.
- Due April 24<sup>th</sup>.