

512.120 Beneficiary protections.

(a) Beneficiary freedom of choice. (1) The model participant and its downstream model participants must not restrict beneficiaries' ability to choose to receive care from any provider or supplier.

(2) The model participant and its downstream model participants must not commit any act or omission, nor adopt any policy that inhibits beneficiaries from exercising their freedom to choose to receive care from any provider or supplier or from any health care provider who has opted out of Medicare. The model participant and its downstream model participants may communicate to model beneficiaries the benefits of receiving care with the model participant, if otherwise consistent with the requirements of this part and applicable law.

(b) Availability of services. (1) The model participant and its downstream participants must continue to make medically necessary covered services available to beneficiaries to the extent required by applicable law. Model beneficiaries and their assignees retain their rights to appeal claims in accordance with part 405, subpart I of this chapter.

(2) The model participant and its downstream participants must not take any action to select or avoid treating certain Medicare beneficiaries based on their income levels or based on factors that would render the beneficiary an "at-risk beneficiary" as defined at § 425.20 of this chapter.

(3) The model participant and its downstream participants must not take any action to selectively target or engage beneficiaries who are relatively healthy or otherwise expected to improve the model participant's or downstream participant's financial or quality performance, a practice commonly referred to as "cherry-picking."

(c) Descriptive model materials and activities. (1) The model participant and its downstream participants must not use or distribute descriptive model materials and activities that are materially inaccurate or misleading.

(2) The model participant and its downstream participants must include the following statement on all descriptive model materials and activities: "The statements contained in this document are solely those of the authors and do not necessarily reflect the views or policies of the Centers for Medicare & Medicaid Services (CMS). The authors assume responsibility for the accuracy and completeness of the information contained in this document."

(3) The model participant and its downstream participants must retain copies of all written and electronic descriptive model materials and activities and appropriate records for all other descriptive model materials and activities in a manner consistent with § 512.135(c).

(4) CMS reserves the right to review, or have a designee review, descriptive model materials and activities to determine whether or not the content is materially inaccurate or misleading. This review takes place at a time and in a manner specified by CMS once the descriptive model materials and activities are in use by the model participant.