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**DATE:** August 6, 2019

**TO:** Medicare Advantage Organizations, Prescription Drug Plans, and Section 1876 Cost Plans

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**SUBJECT: Medicare Communications and Marketing Guidelines**

Pending issuance of updated guidance, Medicare Advantage Organizations, Prescription Drug Plans, and Section 1876 Cost Plans may rely on the contract year (CY) 2019 Medicare Communications and Marketing Guidelines (MCMG), which can be found at <https://www.cms.gov/Medicare/Health-Plans/ManagedCareMarketing/FinalPartCMarketingGuidelines.html>, subject to the updated guidance provided in this memorandum. The changes here are designed to clarify the scope of the guidance and to minimize or eliminate burden.

Below are updates to the MCMG applicable to all CY2020 marketing and communication materials and activities. Please note, however, that the deleted language (shown in italics) is no longer applicable as of the release date of this memo. CMS suggest that Plans/Part D Sponsors review the CY2019 MCMG in conjunction with these changes.

Stakeholders are encouraged to review the MCMG and submit any questions to the marketing mailbox at [marketing@cms.hhs.gov](mailto:marketing@cms.hhs.gov).

## **Section 30 – General Communications Requirements**

### Subsection 30.4 – Hours of Operation

Delete: *“Plan’s/Part D sponsor’s hours and days of operation must be included when a customer service number is provided on all marketing and communications materials in order to ensure that notice of the customer service contact information is adequate and not confusing or misleading. This does not apply to enrollee ID cards and the standardized Star Ratings document. In addition”*

*“Note: CMS requires Plans/Part D sponsors to list the hours and days of operation only once in conjunction with the customer service number and 1-800-MEDICARE listings.”*

### Subsection 30.7– Prohibited Terminology/Statements

Revise language in first paragraph to read: Plans/Part D sponsors are prohibited from **providing inaccurate or misleading information, or engaging in activities that could mislead or confuse beneficiaries or misrepresent the Plan/Part D sponsor.**

### Subsection 30.9 – Co-branding

Delete: *“Plans/Part D sponsors must enter in HPMS any co-branding relationships, including any changes in or newly formed co-branding relationships, prior to marketing them. CMS does not review or approve such relationships but needs the information to review associated marketing materials. Plans/Part D sponsors should refer to the HPMS Bid Submission User Manual for instructions on entering co-branding information.”*

Subsections 30.9.1 and 30.9.2 are still applicable.

## **Section 40 – General Marketing Requirements**

Delete second paragraph: *“Plans/Part D sponsors may only advertise in their defined service area, unless unavoidable (e.g., advertising in media with a national audience or with an audience that includes some individuals outside of the service area, such as a Metropolitan Statistical Area that covers two regions). Plans/Part D sponsors must clearly disclose their service area in the marketing materials.”*

### Subsection 40.1 – Plan Comparisons

Delete: *“(e.g., by studies or statistical data)”*

### Subsection 40.2 – Marketing through Unsolicited Contacts

Delete from the Note: *“If a potential enrollee provides permission to be contacted, the contact must be event-specific, and may not be treated as open-ended permission for future contacts.”*

### Subsection 40.6.1 – Marketing Plans/Part D Sponsors with an Overall 5-Star Rating

In the third bullet point, replace “*Plans are not permitted to create their own gold star icon or any other icon of distinction.*” with **Plans may create their own gold star icon (or any other icon of distinction) so long as the icon is not misleading or confusing to beneficiaries.**

### Subsection 40.6.2 – Low Performing Icon Plans/Part D Sponsors

Delete fifth bullet point: “*May not inform beneficiaries that they may request an SEP and move to a higher rated plan if they are dissatisfied with low performing plan.*”

### Subsection 40.7 – Prohibition of Open Enrollment Period Marketing

Add to second paragraph, as a fifth bullet point, above the “Note:” **Include general information on their website about enrollment periods, including the OEP.**

### Subsection 40.8 – Marketing of Rewards and Incentives Programs

Delete third bullet: “*Be provided in conjunction with information about plan benefits; and*

Delete fourth bullet: “*Include information about all rewards and incentives programs offered by the MA Plan, and are not limited to a specific program, or a specific reward or incentive within a program.*”

Delete “*a promotional*” from Note section - Nominal gifts that are part of ~~*a promotional*~~ marketing activity are different from rewards and incentives.

## **Section 50 – Outreach Activities**

### Subsection 50.1 – Educational Events

Delete “*future*” from fifth bullet - May set up a ~~*future*~~ marketing appointment, and distribute business cards and contact information for beneficiaries to initiate contact (this includes completing and collecting a Scope of Appointment (SOA) form); and

Delete seventh bullet: “*May not conduct a marketing/sales event immediately following an educational event in the same general location (e.g., same hotel).*”

### Subsection 50.2 – Marketing/Sales Events

Replace “*scripts*” with “talking points” in first bullet to read: Plans/Part D sponsors must submit ~~*script*~~ **talking points, if applicable**, and presentations to CMS prior to use, including those to be used by agents/brokers;

## **Section 60 – Activities in a Healthcare Setting**

## Subsection 60.1 – Provider-Initiated Activities

Add to language to clarify meaning of permissible provider initiated marketing activities – **CMS considers the following** contracted provider-initiated activities **to be outside the definition of marketing and, therefore, not subject to the regulation as marketing: ...**

## Subsection 60.4 – Special Guidance for ~~Institutional Special Needs~~ **Plans (I-SNPs)/Part D Sponsors** Serving Long- Term Care Facility Residents

Remove *I-SNP* references and replace with “Plans/Part D sponsor(s)”

In addition to the guidance previously provided in this section, the following requirements apply to marketing and communication by **Plan/Part D sponsors** serving long-term care facility residents and by contracted providers.

As outlined in section 60.1, when contracted providers discuss health care options at the request of residents of a long-term care facility or as a matter of course in treatment, it is considered provider-initiated and does not fall under the requirements of marketing. Plans/Part D sponsors may provide contracted long-term care facilities with materials for inclusion in admission packets that announce the Plan/Part D sponsor’s contractual relationship. CMS considers these communication materials.

CMS permits Plans/Part D sponsors to schedule appointments with residents of long-term care facilities (e.g., nursing homes, assisted living facilities, board and care homes) upon a resident’s request. If a resident did not request an appointment, any visit by an agent or broker is considered unsolicited door-to-door marketing.

Depending on the context of a given situation, long-term care facilities and staff can be viewed as both provider and Plan. **Plan/Part D sponsors** should put the necessary boundaries in place between clinical and sales staff to mitigate conflicts of interest. **Plan/Part D sponsors** may use provider staff operating in a social worker capacity to provide information, including marketing materials, to residents. Such information must not include an enrollment form and that social worker may not accept or collect a scope of appointment or enrollment form on behalf of the **Plan/Part D sponsor**. The beneficiary or authorized representative must initiate additional communication with the Plan/Part D sponsor following the receipt of a business reply card, phone number or marketing materials.

## **Section 70 – Websites and Social/Electronic Media**

### Subsection 70.1.1 – General Website Requirements

Under the subheading “Plan/Part D sponsor websites must:”, update fourth bullet point to read: **Include or provide access to (e.g., through a hyperlink) applicable disclaimers as required.**

**Note:** The Federal Contracting Disclaimer only has to be placed on one web page.

Under the subheading “Plan’s/Part D sponsor’s must ensure that their website:”, Revised second bullet point to read: Is ~~reviewed monthly and~~ updated *as needed* **within 30 days from notification of change** (See Prescription Drug Benefit Manual, Chapter 6 for information on updates and notice to beneficiaries regarding midyear formulary changes);

## **Section 80 – Call Centers**

Add to section opening paragraph: **Call Center requirements and operational standards mentioned in this section are applicable to customer service call centers operated by Plans/Part D sponsors and their downstream entities for current and prospective members.**

### Subsection 80.1 – Customer Service Call Center Requirements and Standards

Revise sentence to read: Plans/Part D sponsors must operate a toll-free customer service call centers **for current and prospective enrollees.**

Add eighth bullet: **Submit, via HPMS using code 4044, hold time messages (i.e., messages played when an enrollee or prospective enrollee is on hold when calling the plan) that contain marketing content.**

### Subsection 80.1.1 – Customer Service Call Center Hours of Operations

Re-number - change 80.2 to 80.1.1

Revise sentence in the second paragraph to read: In light of the scope and nature of services and benefits provided by Plans/Part D sponsors, CMS interprets usual business hours **for customer service call centers for current and prospective members** as meaning at least the following:

**Add new subsection 80.2 – Hours of Operation for Telephone Lines Solely Designated for Sales and Enrollment**

**Plans/Part D sponsors with phone lines dedicated solely to marketing activities, such as sales/enrollment activities, may operate these lines during business hours that are different from those defined in section 80.1, provided all other requirements in section 80.1 are met. In addition, telesales hours and days of operation must be the same for all individuals regardless of whether they speak English, a non-English language, or use assistive devices for communication.**

## **Section 90 – Tracking, Submission, and Review Process**

### Subsection 90.1 – Material Identification

Add to list of materials excluded from the material ID requirement: Corporate notices or forms (i.e., not MA/Part D specific) meeting the definition of communications such as privacy notices and authorization to disclosure protected health information (PHI); and...

Add new paragraph as follows: Note: When a third-party, such as a PBM, creates and distributes member specific materials (e.g., Explanation of Benefits (EOB), explanation of payment, direct claim form) on behalf of multiple organizations, it is acceptable to use the material ID for only one organization. For example, if a third party, "Everyday PBM", creates EOBs for three MA plans - H1234, H9876, and H0011, one of the MA plans would provide a material ID that is used for the EOBs for all three organizations (for example: H1234\_2020EOB\_C).

While CMS allows this flexibility for third party materials, it is not a requirement.

Add: Plans/Part D sponsors must use the current Material ID in HPMS (refer to section 90.4).

### Subsection 90.2 – Material Replacement

- Add language that replacement file process should be used when updating original material: If Plans/Part D sponsors change their current year documents, the Plan/Part D sponsor must resubmit updated materials. For the specified materials below, HPMS now has a “**Replacement File** ~~material replacement~~” functionality to allow updated materials to be resubmitted ~~using the same material ID~~ as attachments using the same material ID. When a Plan/Part D sponsor uses the Replacement File function, they should not mark the original material as ‘no longer in use.’”
- Add language that explains Plans/Part D sponsors should notify enrollees about any changes to current year materials within a reasonable timeframe: **When applicable, Plans/Part D sponsors should notify enrollees about changes to current year materials within a reasonable timeframe.**

### Subsection 90.4 – Submission of Websites and Webpages for Review

Add language that websites must be submitted to CMS on an annual basis and must include the material ID for the current year on all website pages: **Websites containing any marketing content must be submitted to CMS on an annual basis (contract year) via HPMS. Plans/Part D sponsors must use code 4006 for required websites and code 4037 for other websites, including those managed by contracted third parties. Websites with marketing content must include the current Material ID on all web pages. All websites are considered File & Use submissions.**

Add new subsection 90.4.1 as follows:

#### 90.4.1 – Submission of Websites with Marketing Content for CMS Review and Approval

§§ 422.2262, 422.2264, 423.2262, 423.2264

An initial website, as required in section 70.1, must be submitted as a Word document containing the URL. Screenshots, test sites, etc. are not needed. The material ID used for the submission must correspond to the material ID on the website, except it will end with an underscore followed by the contract year (e.g., H1234\_abcwebsite\_2020). The contract year does not have to appear on the actual webpages. The website may go live five days after HPMS submission.

The website may keep the same material ID on the site's pages as updates are made (e.g. H1234\_abcwebsite). Updates made to the website within the same contract year, must be submitted as a Word document containing the URL and a list of all changes. The updated submission must use the website's material ID followed by an underscore and contract year, followed by an underscore and a letter ("A", "B", "C", etc.) corresponding to each resubmission (e.g., H1234\_abcwebsite\_2020\_A). The contract year and the letter do not have to be shown on the actual website, rather the material ID will remain the same (e.g., H1234\_abcwebsite).

Updates being made as a result of a change in contract year must also be submitted via a Word document that contains the URL and lists all changes. The updated submission must use the website's material ID followed by an underscore and the contract year (e.g., H1234\_abcwebsite\_2020). The material ID on the actual web pages does not have to include the contract year. Subsequent updates will follow the process outlined above.

**Note:** Plans/Part D sponsors are not required to submit web page updates to communication content or content required in section 70.1.3. Plans/Part D sponsors are not required to take down their website while making updates. However, Plan/Part D sponsors must wait five (5) days following the submission of Word document specifying the changes before going live with the changes on their website.

#### Subsection 90.6 – Status of HPMS Material

Revise "Note" at the end of the section to read: CMS's approval or acceptance of marketing materials is not time limited. In other words, marketing materials that are "approved" (or "accepted") remain "approved" as long as the material is compliant with current law and the most recent version of the MCMG. Unless CMS specifies otherwise, materials that are no longer in use by a Plan/Part D sponsor should be marked as no longer in use in HPMS.

### **Section 100 – Required Materials**

#### Subsection 100.2.1 – Notification of Availability of Electronic Materials

To clarify the scope of the guidance, revise the first sentence to read: Without prior beneficiary authorization, Plans/Part D sponsors may send **new and current** (i.e., not **prospective**) enrollees a notice informing enrollees how to access CMS designated required materials electronically instead of mailing hard copies of the documents.

#### Subsection 100.3 – Changes and Corrections to Existing Documents

Add language pertaining to timeframe requirements for corrected documents:

Below are the mailing and timeframe requirements regarding corrected documents:

- ANOC, EOC, and formulary erratas must be sent in hard copy within a reasonable timeframe **or electronically if the enrollee has opted into receiving electronic versions;**
- Both hardcopy and online provider/pharmacy directories must be updated within 30 calendar days of receipt of updated or corrected information from the provider/pharmacy to ensure accurate information is provided to enrollees. **If an enrollee has requested a hardcopy directory, the Plan/Part D sponsor may attach an addendum of recent updates to the hard copy instead of printing an entirely new document if the request is made prior to the annual update. CMS does not expect a hard copy directory or addendum to be sent whenever there is a change to the directory; and**

## **Appendix 2 – Disclaimers**

- Remove: *Federal Contracting Statement requirements for communications materials*
- Remove: *Benefits disclaimer*
- Remove: *Non-English Translations disclaimer*
- Remove: *Plan Online Enrollment disclaimer*

## **Appendix 5 – Summary of Benefits Instructions**

Add “**Ambulatory Surgery Center**” should be included in SB and listed with Part C benefits.

Revise Part D benefits language to read:

- **Cost sharing for deductible, the initial coverage phase coverage gap, and catastrophic coverage. Cost sharing must be broken down by the tier number/name/ (e.g., tier 1 generic).**
- **When applicable, a notation that costs may differ based on pharmacy type or status (e.g., preferred /non-preferred, mail order, long-term care (LTC) or home infusion, and 30 or 90 day supply).**

Add: “**Plans may offer supplemental benefits in addition to Part C benefits and Part D benefits.**”