DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, Maryland 21244-1850

CENTER FOR MEDICARE

DATE: July 2, 2015

TO: Medicare Advantage Organizations
Medicare Advantage - Prescription Drug Organizations
Section 1876 Cost Plans
Prescription Drug Plan Sponsors
Employer/Union-Sponsored Group Health Plans
Medicare-Medicaid Plans

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SUBJECT: Contract Year 2016 Medicare Marketing Guidelines

The Centers for Medicare & Medicaid Services (CMS) is pleased to announce the release of the final updated Medicare Marketing Guidelines (MMG) for Medicare Advantage organizations (MAOs); prescription drug plan (PDP) sponsors; section 1876 cost-based contractors; demonstration plans, including Medicare-Medicaid Plans; and employer and union-sponsored group plans, including employer/union-only group waiver plans (EGWPs). The MMG will be effective upon release of the CY2016 marketing materials. The CY 2016 MMG is posted at: http://www.cms.gov/Medicare/Health-Plans/ManagedCareMarketing/FinalPartCMarketingGuidelines.html .

To obtain a better understanding and identify opportunities for improvement, CMS invited plans and organizations on December 23, 2014, to respond to our 2016 Health Plan Management System Medicare Marketing Policy Questionnaire. We received over 270 responses. Based on the feedback received, we made a several noteworthy revisions (shown in red text) and clarifications to the CY 2016 MMG guidance. Please note that we have streamlined some MMG sections for clarity. While the changes may appear extensive in these sections, the information remains in black text because there is no change in policy. These and other changes are further described in the attached Summary of Changes document.

We remind MAOs and PDP sponsors that they are responsible for:

- Ensuring compliance with CMS' current marketing regulations and guidance, including monitoring and overseeing the activities of their subcontractors, downstream entities, and/or delegated entities;

- Fully disclosing information to beneficiaries about plan benefits, policies, and procedures; and
- Documenting compliance with all applicable MMG requirements.

Should you have any questions, please contact your Account Manager and/or Marketing Reviewer.

CY 2016 Medicare Marketing Guidelines
Summary of Changes

Section

10 – Introduction

- Added: If CMS finds that, the Plan/Part D Sponsor failed to comply with applicable rules and guidance, CMS may take compliance action, including intermediate sanctions and civil money penalties.

20 – Materials Subject to Review

- Clarified when enrollee newsletters are not subject to review.
- Added:
  - State communications.
  - Password protected websites that only currently enrolled members can access.
  - Marketing materials included on the website are still subject to review (e.g., Plan/Part D Sponsor advertisements).

30 – Plan/Part D Sponsor Responsibilities

- Added to section 30.3 – *Plan/Part D Sponsor Responsibility for Subcontractor Activities and Submission of Materials for CMS Review,* that Plans/Part D Sponsors must submit agent/broker websites that reference specific MA/Part D products in HPMS.
- Added a new requirement to section 30.7 – *Required Materials for New and Renewing Enrollees at Time of Enrollment and Thereafter,* regarding provider/pharmacy directory notices when plans decide not to deliver a hard copy directory.
- Moved section 30.8 – *Hold Time Messages,* to section 80.1 – *Customer Services Call Center Requirements.*

40 – General Marketing Requirements

- Moved MSA information in section 140 – *Medicare Medical Savings Accounts Plans,* to section 40.4 – *Prohibited Terminology/Statements.*

- Added requirement to section 40.9 – *Providing Materials in Different Media Types,* that prior consent from the enrollee is not required to send directories electronically.

50 – Marketing Material Types and Disclaimers

- Added provider/pharmacy directory and formulary disclaimer to section 50.15 – *Pharmacy/Provider Directory and Formulary Disclaimers*.

- Added the marketing disclaimer for Part D Sponsors with limited access to preferred cost sharing pharmacies that must be included on materials that reference preferred cost sharing pharmacy networks and/or preferred cost sharing benefits.

60 – Required Documents

- Added language to section 60.3 – *Additional Materials Enclosed with Required Post-Enrollment Materials,* clarifying that Plans/Part D Sponsors can continue to bind materials together as long as they are distinct from each other.
- Added language to section 60.4 – *Directories,* to indicate that Plans/Part D Sponsors may choose to either send the Provider/Pharmacy Directory (as applicable) in hard copy or send a stand-alone hard copy notice (i.e., not bound with other materials) to enrollees, describing where they can find the Provider/Pharmacy Directories online and how they can request a hard copy.
- Added to section 60.5.1 – *Abridged Formulary,* that the document must also include the date the formulary was last updated and describe how to obtain updated formulary information.
- Added text to section 60.6 – *Part D Explanation of Benefits,* regarding MMP use of the Part D EOB model.

70 – Promotional Activities/Nominal Gifts

- Revised language in section 70.9.2 – *Personal/Individual Marketing Appointments,* to clarify that all one-on-one appointments, regardless of the venue (e.g., in home, conference call, library), with beneficiaries are considered sales/marketing events and scope of appointment guidance must be followed.
- Clarified in section 70.11.2 – *Provider Affiliation Announcements,* that new provider affiliation announcements can only be made through direct mail, e-mail, or by telephone, and that advertisements can only be used for continuing affiliation announcements.

80 – Telephonic Activities and Scripts

- Moved language from section 30.8 – *Hold Time Messages,* to section 80.1. – *Customer Service Call Center Requirements.*
- Added language to section 80.1 – *Customer Service Call Center Requirements,* to indicate that interpreters and CSRs for the TTY number must be available within 7 minutes of reaching the CSR.
- Deleted bank account numbers and credit card numbers from the examples of beneficiary identification numbers in section 80.2. – *Requirements for Informational Scripts.*

90 – The Marketing Review Process

- Added language to section 90.2.1 – *Submission of Non-English and Alternate Format Materials,* clarifying the process for submitting non-English and alternate format materials in HPMS.

- Added text to section 90.2.2 – *Submission of Websites for Review*, to indicate that Plans/Part D Sponsors must resubmit webpages for review when changes are made to content related to plan benefits, premiums, or cost sharing.
- Added to section 90.2.3 – *Submission of Multi-Plan Materials*, that to be eligible for the multi-plan submission process, the "Auxiliary" material must be uploaded within 60 days of the approval/acceptance of the "Primary" material. Materials that do not meet this criterion will undergo the standard material review process.
- Added new section 90.2.4 – *Submission of Mobile Applications*.
- Added text to section 90.3.6 – *Alternate Format, SA/LIS, and Populated Template*, to clarify code statuses of materials receive in HPMS.

100 – Plan Sponsor Websites, Social/Electronic Media

- Revised all of section 100 – *Plan/Part D Sponsor Websites and Social/Electronic Media*, including guidance to support the requirement that provider directories are accurate and current, as included in the *Announcement of CY 2016 Medicare Advantage Capitation Rates and Medicare Advantage and Part D Payment Policies and Final Call Letter*.
- Added new guidance for social media and mobile applications.

120 – Marketing Sales Oversight and Responsibilities

- Added text to section 120.2 – *Plan Reporting of Terminated Agents*, to clarify what CMS expects to be reported to the agency and states.
- Added language to section 120.4 – *Compensation Applicability and Definitions*, regarding PDP referral/finder's fees.
- Added language to section 120.4.3 – *Compensation Recovery Requirements (Charge-backs)*, to explain chargebacks and add MMP as a like plan type change.

140 – Medicare Medical Savings Accounts Plans

- Language moved to section 40.4 – *Prohibited Terminology/Statements*.
- Section marked as reserved.

160 – Allowable Use of Medicare Beneficiary Information Obtained from CMS

- Deleted language in section 160.4 – *Sending Non-plan and Non-health Information Once Prior Authorization is Received*, stating that health-related content can be included with plan-related materials.
- Added language to the introduction of section 160 – *Allowable Use of Medicare Beneficiary Information Obtained from CMS*, regarding compliance with the HIPAA privacy and security rules (45 CFR Parts 160, 164) and provided a link to a HIPAA resource website.

Appendix 1 – Definitions

- Revised definitions for Marketing Materials, Alternate Formats, and Value Added Items and Services (VAIS).

Appendix 2 – Related Laws and Regulations

- Added examples of alternate formats to the explanation of the Section 504 of the Rehabilitation Act.

Appendix 3 – Multi-Language Insert

- Deleted Appendix 3 – *Multi-Language Insert*, has been changed to a model document.

Appendix 4 – Pharmacy Technical Help, Coverage Determination and Appeal Call Center Requirements

- Renamed "Appendix 3."