Final CY 2015 Marketing Guidance for New York's Medicare-Medicaid Plans

Released: September 25, 2014

Introduction

All Medicare Advantage-Prescription Drug (MA-PD) plan sponsor requirements in the CY 2015 Medicare Marketing Guidelines (MMG), posted at http://www.cms.gov/ManagedCareMarketing, apply to Medicare-Medicaid plans (MMPs) participating in the New York Capitated Financial Alignment Demonstration – also referred to as Fully-Integrated Duals Advantage (FIDA) Plans – except as noted or modified in this guidance document.[1] Plans are also required to follow all applicable New York State and federal regulations regarding marketing, including 18 CRR-NY 360-10.9 and 42 CFR 438.104. For purposes of this document, we refer to MMPs as FIDA Plans, though we note that CMS uses the term MMP to refer to all plans in all states participating in Capitated Financial Alignment Demonstrations. We also clarify that Plans may not distribute any marketing materials that require State approval without first obtaining State approval.

This guidance document provides information about those sections of the MMG that are not applicable or that would be different for FIDA Plans in New York; therefore, this guidance document should be considered an addendum to the CY 2015 MMG. In addition, this guidance document further clarifies additional marketing rules specific to New York State Medicaid requirements, which apply to the FIDA Demonstration. This FIDA Plan guidance will be applicable to all marketing done for CY 2015 benefits. The table below summarizes those sections of the CY 2015 MMG that are clarified, modified, or replaced for FIDA Plans in this guidance.

Table 1: Summary of Clarifications, Modifications, or Replacements of MMG Guidance

Medicare Marketing Guidelines (MMG) Section	Change in this Guidance Document
Section 10 – Introduction	Clarifies guidance on marketing start dates for CY 2015. Specifies requirements for a Marketing Plan.
Section 30.5 – Requirements Pertaining to Non-English Speaking Populations	Clarifies the requirements of this section for FIDA Plans.
Section 30.5.1 – Multi-Language Insert	Clarifies the requirements of this section for FIDA Plans.
Section 30.6 – Required Materials with an Enrollment Form	Clarifies that the requirements of this section are not applicable to FIDA Plans.

[1] Any requirements for Special Needs Plans (SNPs), Private Fee-for-Service (PFFS) plans, Preferred Provider Organizations (PPOs), and Section 1876 Cost-Based Plans (cost plans) in the MMG do not apply unless specifically noted in this guidance.

Medicare Marketing Guidelines (MMG) Section	Change in this Guidance Document
Section 30.7 – Required Materials for New and Renewing Enrollees at Time of Enrollment and Thereafter	Replaces current guidance in the MMG with new guidance for FIDA Plans.
Section 30.10 – Star Ratings Information from CMS	Clarifies that the requirements of this section are not applicable to FIDA Plans.
Section 30.10.1 – Referencing Star Ratings in Marketing Materials	Clarifies that the requirements of this section are not applicable to FIDA Plans.
Section 30.10.2 – Plans with an Overall 5-Star Rating	Clarifies that the requirements of this section are not applicable to FIDA Plans.
Section 40.6 – Hours of Operation Requirements for Marketing Materials	Adds new requirements for FIDA Plans to current MMG requirements of this section.
Section 40.8 – Marketing of Multiple Lines of Business Section 40.8.1 – Multiple Lines of Business – General Information	Clarifies that organizations offering both FIDA Plan and non-FIDA Plan products in a service area may not market the non-FIDA Plan products in the FIDA Plan marketing materials.
Section 40.8.3 – Marketing Materials from Third Parties that Provide Non-Benefit/Non-Health Services	Clarifies that the requirements of this section do not apply to materials produced by the State and the State's enrollment broker.
Section 40.10 – Standardization of Plan Name Type	Clarifies the requirements of this section for FIDA Plans.
Section 50.1 – Federal Contracting Disclaimer	Replaces current disclaimer in this section with a new Federal-State disclaimer for FIDA Plans.
Section 50.2 – Disclaimers When Benefits Are Mentioned	Replaces current disclaimers in this section with new disclaimers for FIDA Plans.
Section 50.3 – Disclaimers When Plan Premiums Are Mentioned	Clarifies that the requirements of this section are not applicable to FIDA Plans.
Section 50.4 – Disclaimer on Availability of Non-English Translations	Replaces current disclaimer in this section with a new disclaimer for FIDA Plans.
Section 50.5 – Disclaimer on SNP Materials	Clarifies that FIDA Plans must include a disclaimer regarding the NCQA approval of their model of care and replaces current disclaimer in this section with a new disclaimer for FIDA Plans.

Medicare Marketing Guidelines (MMG) Section	Change in this Guidance Document
Section 50.12 – Disclaimer for Plans Accepting Online Enrollment Requests	Clarifies that the requirements of this section are not applicable to FIDA Plans.
Section 50.13 – Disclaimer When Using Third Party Materials	Clarifies that the requirements of this section are not applicable to FIDA Plans.
Section 50.14 – Disclaimer When Referencing Star Ratings Information	Clarifies that the requirements of this section are not applicable to FIDA Plans.
Section 50.18 – Disclaimer on Unsolicited Marketing Materials	Adds a new disclaimer requirement for FIDA Plans for unsolicited marketing materials such as mail and other print media.
Section 50.19 – Disclaimer on Participant Ombudsman	Adds a new disclaimer requirement for FIDA Plans.
Section 60.1 – Summary of Benefits (SB)	Replaces current guidance in this section with new guidance for FIDA Plans.
Section 60.2 – ID Card Requirements	Clarifies the requirements of this section for FIDA Plans.
Section 60.4 – Directories	Clarifies the requirements of this section for FIDA Plans.
Section 60.5 – Formulary and Formulary Change Notice Requirements	Clarifies the requirements of this section for FIDA Plans. Extends the requirements for formulary change notifications to Medicaid-covered drugs.
Section 60.7 – Annual Notice of Change (ANOC) and Evidence of Coverage (EOC)	Replaces current guidance in this section with new guidance for FIDA Plans.
Section 60.8 – Other Mid-Year Changes Requiring Participant Notification	Extends the requirements of this section to mid-year changes in Medicaid benefits.
Section 70.1 – Promotional Activities	Clarifies that FIDA Plans may not offer financial or other incentives of any kind to potential FIDA Plan Participants.
Section 70.1.1 – Nominal Gifts	Clarifies that promotional activities, rewards, incentives and nominal gifts may be used only for current FIDA Plan Participants.
Section 70.5 – Marketing Through Unsolicited Contacts	Clarifies that, in addition to the requirements of this section, a disclaimer about New York's

Medicare Marketing Guidelines (MMG) Section	Change in this Guidance Document
	enrollment broker must be included on unsolicited marketing materials.
Section 70.6 – Telephonic Contact	Clarifies that FIDA Plans may not call current FIDA Plan Participants to promote other Medicare plan types. Similarly, FIDA Plans may not promote their FIDA Plan offering to non-FIDA Plan Participants in other products lines by telephone unless the non-FIDA Plan Participant proactively requests this information.
Section 70.7 – Outbound Enrollment and Verification Requirements	Clarifies that the requirements of this section are not applicable to FIDA Plans.
Section 70.9 - Marketing/Sales Events and Appointments	Adds new requirements for FIDA Plans to current MMG requirements of this section.
Section 70.9.2 – Personal/Individual Marketing Appointments	Clarifies that the requirements of this section do not apply to FIDA Plans.
Section 70.11 – Marketing in the Health Care Setting	Extends the flexibility for facilities to provide an explanatory brochure about contracted FIDA Plans to day care settings and to chronic and psychiatric hospitals.
Section 70.11.5 – Comparative and Descriptive Plan Information Provided by a Non-Benefit/Non-Health Service-Providing Third Party	Clarifies that the requirements of this section vis-à-vis State agencies also apply to the State's enrollment broker.
Section 80.1 – Customer Service Call Center Requirements	Modifies the requirements in this section regarding permissible use of alternative call center technologies.
Section 80.2 – Requirements for Informational Scripts	Clarifies requirements in this section for FIDA Plans.
Section 90 – The Marketing Review Process	Clarifies that references in this section (and subsections) to CMS in its role in marketing reviews also apply to the State.
Section 90.2.3 – Submission of Multi-Plan Materials	Clarifies that the requirements of this section are not applicable to FIDA Plans.

Medicare Marketing Guidelines (MMG) Section	Change in this Guidance Document
Section 90.3 – HPMS Material Statuses	Clarifies the requirements of this section with respect to the lack of "deeming" for jointly reviewed materials.
Section 90.3.1 – Approved	Adds new requirements for FIDA Plans to current MMG requirements of this section.
Section 90.4 – Resubmitting Previously Disapproved Pieces	Adds new requirements for FIDA Plans to current MMG requirements of this section.
Section 90.5 – Time Frames for Marketing Review	Clarifies the requirements of this section with respect to the lack of "deeming" for jointly reviewed materials.
Section 90.6.1 – Restriction on the Manual Review of File & Use Eligible Materials	Clarifies that the requirements of this section are not applicable to FIDA Plans.
Section 100.2 – Required Content	Adds new requirements for FIDA Plans to current MMG requirements of this section.
Section 100.2.1 – Required Documents for All Plans/Part D Sponsors	Clarifies that some of the requirements of this section are not applicable to FIDA Plans.
Section 100.2.2 – Required Documents for Part D Sponsors	Clarifies that some of the requirements of this section are not applicable to FIDA Plans.
Section 100.3 – Electronic Enrollment	Clarifies that the requirements of this section are not applicable to FIDA Plans.
Section 100.5 – Online Formulary, Utilization Management (UM), and Notice Requirements	Extends the formulary change notice requirements of this section to non-Part D drug formulary changes.
Section 120 – Marketing and Sales Oversight and Responsibilities	Clarifies that the requirements of this section (and subsections) are not applicable to FIDA Plans with respect to independent agents and brokers.
Section 150 – Use of Medicare Mark for Part D Sponsors	Clarifies the requirements of this section for FIDA Plans.
Section 160.1 – When Prior Authorization from the Beneficiary is Not Required	Clarifies that FIDA Plans may not send marketing materials to current FIDA Plan Participants about other Medicare products they offer, and they may not send information requesting Participants' prior authorization to receive

Medicare Marketing Guidelines (MMG) Section	Change in this Guidance Document
	materials about other Medicare products they offer.
Section 160.4 – Sending Non-plan and Non-health Information Once Prior Authorization is Received	Replaces current disclaimer in this section with a new disclaimer for FIDA Plans.

In addition, we clarify that all requirements applicable to independent and employed agents/brokers throughout the MMG will be inapplicable to FIDA Plans in New York, because the use of independent agents/brokers will not be permitted and all FIDA Plan enrollment transactions must be processed by New York's enrollment broker.

We clarify that marketing documents and marketing activities must reasonably accommodate persons with physical or communications-related disabilities, including individuals with cognitive, learning, and psychiatric disabilities. Language related to this requirement is incorporated throughout this guidance.

We note that materials created by FIDA Plans should take into account the reading level requirements established in the three-way contract. Available MMP-specific model materials reflect acceptable reading levels. Current Part D models will be acceptable for use as currently provided, and FIDA Plans must add required disclaimers in section 50 of this guidance, as appropriate. Adding required FIDA Plan disclaimers to Part D models will not render the documents non-model when submitted for review or accepted as File & Use materials.

We refer FIDA Plans to the following available model materials:

- FIDA Plan-specific model materials tailored to FIDA Plans in New York, including, but not limited to, an Annual Notice of Change (ANOC), Evidence of Coverage (EOC) (Participant Handbook), comprehensive integrated formulary, combined provider/pharmacy directory, ID card, prescription drug explanation of benefits, transition notice, prescription transfer notice, excluded provider notice, and welcome letters: http://cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/FinancialAlignmentInitiative/InformationandGuidanceforPlans.html.

  CY 2015 FIDA Plan-specific model materials will be added to the website above and will also be disseminated via the Health Plan Management System (HPMS).

- Part D appeals and grievances models in Chapter 18 of the Prescription Drug Benefit Manual: http://cms.gov/Medicare/Appeals-and-Grievances/MedPrescriptDrugApplGriev/Forms.html.

- Part C appeals and grievances models in Chapter 13 of the Medicare Managed Care Manual: http://cms.gov/Medicare/Appeals-and-Grievances/MMCAG/Notices.html.

- ANOC/EOC (Member Handbook) errata model: http://www.cms.gov/Medicare/Health-Plans/ManagedCareMarketing/MarketngModelsStandardDocumentsandEducationalMaterial.html.

- The CMS Multi-Language insert model (Appendix 3 of the MMG): http://www.cms.gov/Medicare/Health-Plans/ManagedCareMarketing/index.html.

In addition, FIDA Plans will be required to submit an annual marketing plan to CMS and the State for review and approval. More detail about this requirement is provided in section 10 of this document.

Following are the New York FIDA Plan-specific modifications to the MMG for CY 2015.

Section 10 – Introduction

For CY 2015, FIDA Plans may begin marketing activity no sooner than: (1) December 1, 2014; or (2) once the FIDA Plan has entered into a three-way contract with CMS and the New York State Department of Health (NYSDOH), has passed the CMS/NYSDOH readiness review, and is connected to CMS enrollment and payment systems such that the FIDA Plan is able to receive payment and enrollments; whichever is later. Marketing activity for CY 2016 may begin no earlier than October 1, 2015 and must be consistent with the CY 2016 MMG (which will be issued in final in late spring or early summer of 2015), with the exceptions articulated in New York-specific marketing guidance as appropriate.

FIDA Plans must submit a plan of FIDA Plan Marketing activities to CMS and NYSDOH that sets forth the terms and conditions and proposed activities of the FIDA Plan dedicated staff during the contract period. The following must be included in the marketing plan:

- A description of materials and formats to be used;
- Distribution methods;
- Primary types of marketing locations (such as, but not limited to, senior centers, nursing facilities, health fairs, etc.); and
- A listing of the kinds of community service events the FIDA Plan anticipates sponsoring and/or participating in during which it will provide information and/or distribute FIDA Plan marketing materials.

An approved annual marketing plan must be on file with NYSDOH for its contracted service area prior to the FIDA Plan engaging in the FIDA Plan-specific marketing activities. The marketing plan may be submitted anytime following the issuance of this guidance but no later than October 15, 2014. The marketing plan must include: 1) stated marketing goals and strategies; 2) a description of marketing activities, and the training, development and responsibilities of dedicated marketing staff; 3) a staffing plan, including personnel qualifications, training content and compensation methodology and levels; 4) a description of the FIDA Plan's monitoring activities to ensure compliance with this section; and 5) identification of the primary marketing locations at which marketing will be conducted. The FIDA Plan must describe how it will meet the informational needs related to marketing for the physical and cultural diversity of its potential membership. This includes, but is not limited to, a description of the FIDA Plan's other-than-English language provisions; interpreter services; and alternate communication mechanisms, including sign language, Braille, audio tapes, and/or use of Telecommunications Devices for the Deaf (TDD) services. The FIDA Plan must describe measures for monitoring and enforcing compliance with these guidelines by its marketing representatives including the prohibition of door-to-door solicitation and telephonic or electronic solicitation; a description of the development of pre-enrollee mailing lists that maintains client confidentiality and honors the client's express request for direct contact by the FIDA Plan; and a description of the training, compensation and supervision of its FIDA Plan dedicated marketing representatives. We note that FIDA Plans will still be required to submit marketing events in HPMS as provided in section 70.9.1 of the MMG. We also note that providers may not provide mailing lists of their patients to FIDA Plans. FIDA Plans may also not require providers to distribute Plan-prepared communications to their patients.

Section 30.5 – Requirements Pertaining to Non-English Speaking Populations

The standard articulated in this section for translation of marketing materials into non-English language will be superseded to the extent that New York's standard for translation of marketing materials is more stringent. The New York translation standard – which requires translation of materials into the six most common non-English languages, as designated by the State (which are currently Spanish, Chinese, Russian, Italian, Haitian-Creole, and Korean), exceeds the Medicare standard for translation in New York FIDA Plan service areas for CY 2015.[2] New York's standard requires translation of required marketing materials into the six required languages in all service areas.[3] Required materials are the Summary of Benefits (SB), ANOC/EOC (Participant Handbook), formulary (List of Covered Drugs), provider/pharmacy directory (Provider and Pharmacy Network Directory), and the Part D transition letter.

In addition, FIDA Plans must translate ad hoc enrollee communication materials regarding payments and reimbursements into the six required languages. We note that ad hoc enrollee communication materials are not considered marketing materials and are not submitted in HPMS for marketing review.

Section 30.5.1 – Multi-Language Insert

We clarify that FIDA Plans will need to include a Multi-Language Insert with their demonstration-specific SB and ANOC/EOC (Participant Handbook) documents, as is the case for other plan sponsor types with their Medicare Advantage and Part D SBs and ANOC/EOC documents. New York FIDA Plans must use the Multi-Language Insert in Appendix 3 of the MMG. We clarify that we consider French Creole, which is a language included on the CMS multi-language insert, to be equivalent to Haitian Creole, which is required by New York to be included in the Multi-Language Insert. We also clarify that alternate format materials must be made available upon request.

Section 30.6 – Required Materials with an Enrollment Form

Because FIDA Plans will be too new to measure under the CMS plan (star) rating system, they will not be required to include the Star Ratings Information document when a Participant is provided with pre-enrollment information. Except for some involuntary disenrollment notices, we further clarify that the responsibility for sending enrollment and disenrollment notices to Participants will be delegated to New York's enrollment broker for all demonstration service areas.

[2] Guidance on the CY 2015 translation requirements for all plans, including MMPs, "Contract Year 2015 Translated Marketing Materials Requirements and Methodology," is located at: http://cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/FinancialAlignmentInitiative/Downloads/FinalCY2015MMPTranslationHPMSMemo091214.pdf.

[3] CMS will make available Spanish translations of the New York FIDA Plan Summary of Benefits (SB), formulary (List of Covered Drugs), provider/pharmacy directory (Provider and Pharmacy Network Directory), and ANOC/EOC (Participant Handbook).

Section 30.7 – Required Materials for New and Renewing Enrollees at Time of Enrollment and Thereafter

This section is replaced with the following revised guidance:

Section 30.7 – Required Materials for New and Renewing Participants at Time of Enrollment and Thereafter

42 CFR 422.111(c)(1), 423.128(c)(1), 422.2264(a), 423.2264(a)

The following materials must be provided to Participants at the time of enrollment and annually thereafter:

- Welcome Letter
- Annual Notice of Change (ANOC)/Evidence of Coverage (EOC) (Participant Handbook), or simply an Evidence of Coverage (EOC) (Participant Handbook), as applicable and described in the replacement guidance below for section 60.7 of the MMG.
- A comprehensive integrated formulary (List of Covered Drugs) that includes Medicare and Medicaid outpatient prescription drugs and over-the-counter pharmacy drugs or products provided under the FIDA Plan.
- A combined provider and pharmacy directory (Provider and Pharmacy Network Directory) that includes all providers of Medicare, Medicaid, and additional benefits (required at the time of enrollment; see section 60.4 for additional information about provision of a directory post-enrollment).
- A single identification (ID) card for accessing all covered services under the plan (required at the time of enrollment and as needed or required by the FIDA Plan post-enrollment).
- For individuals enrolled through passive enrollment, a demonstration plan-specific Summary of Benefits (SB) containing a concise description of the important aspects of enrolling in the plan, as well as the benefits offered under the plan, including co-pays, applicable conditions and limitations, and any other conditions associated with receipt or use of benefits. Because the EOC (Participant Handbook) may not be provided until just prior to the effective date of a passive enrollment, the SB must be provided to individuals enrolled through passive enrollment prior to receipt of the EOC (Participant Handbook) to ensure that they have sufficient information about plan benefits to make an informed decision prior to the passive enrollment effective date. Refer to the revised guidance for section 60.7 contained in this document for more information about when an SB must be received by current FIDA Plan Participants post-enrollment.

FIDA Plans must provide Participants who self-select into the demonstration the following materials no later than eight (8) calendar days from receipt of confirmation of enrollment or by the last day of the month prior to the effective date, whichever occurs later. We clarify that this group of Participants who self-select includes individuals who are eligible for passive enrollment but select a different FIDA Plan or initiate an earlier enrollment date than their passive enrollment effective date. For late-month enrollment transactions (those for which confirmation of enrollment is received less than eight (8) calendar days before the end of the month prior to the effective date), FIDA Plans must send these materials no later than eight (8) calendar days from receipt of confirmation of enrollment. FIDA Plans should refer to the date of the Enrollment E-file to identify the start of the eight (8) calendar-day timeframe.

- A welcome letter, which must contain 4Rx information, consistent with a model developed jointly by CMS and the State,
- A comprehensive integrated formulary
- A combined pharmacy/provider directory, consistent with section 60.4 of this guidance
- An EOC (Participant Handbook)
- A single ID card

FIDA Plans must provide Participants who are passively enrolled the following materials no later than 30 calendar days prior to the effective date of enrollment:

- A welcome letter, which must contain 4Rx information, consistent with a model developed jointly by CMS and the State
- A comprehensive integrated formulary
- A combined pharmacy/provider directory, consistent with section 60.4 of this guidance
- A Summary of Benefits (SB)

Individuals eligible for passive enrollment who select a different FIDA Plan or enroll earlier than their passive enrollment effective date must receive the materials listed above on the same timeline as Participants who self-select into the demonstration. Additional materials may not be included in this mailing, unless the FIDA Plan chooses to mail the EOC (Participant Handbook) and ID card early along with the materials in this mailing. In addition, FIDA Plans must provide Participants who are passively enrolled an EOC (Participant Handbook) and a single ID card for receipt by the end of the month preceding the month the enrollment will take effect (e.g., the ID card must be received by a Participant by January 31 for a February 1 effective enrollment date).

After the time of initial enrollment, for both Participants who are passively enrolled and Participants who self-select into the demonstration, the Annual Notice of Change (ANOC) and

EOC (Participant Handbook) must also be received annually consistent with the replacement guidance below for section 60.7 of the MMG.

The following tables summarize the requirements of this section.

Table 2: Required Materials for New Participants

Enrollment Mechanism	Required Materials for New Participants	Timing of Participant Receipt
Passive Enrollment	• Welcome letter • Formulary • Pharmacy/provider directory • SB	30 calendar days prior to the effective date of enrollment
	• ID card • EOC (Participant Handbook)	No later than the day prior to the effective date of enrollment
Self-selected enrollment (with enrollment confirmation received more than 8 calendar days before the end of the month)	• Welcome letter • Formulary • Pharmacy/provider directory • ID card • EOC (Participant Handbook)	No later than the last day of the month prior to the effective date
Self-selected enrollment (with enrollment confirmation received less than 8 calendar days before the end of the month)	• Welcome letter • Formulary • Pharmacy/provider directory • ID card • EOC (Participant Handbook)	No later than 8 calendar days from receipt of the confirmation of enrollment

Table 3: Required Materials for Renewing Participants

Required Materials for Renewing Participants	Timing of Participant Receipt
• ANOC/EOC (Participant Handbook) • Formulary OR • ANOC • SB • Formulary	September 30
If only the ANOC, SB, and formulary are sent by September 30: • EOC (Participant Handbook)	December 31
• ID card	As needed
• Pharmacy/provider directory	Annually. The plan website's directory must be kept up-to-date consistent with section 100.4.

Section 30.10 – Star Ratings Information from CMS

Because FIDA Plans will be too new to measure under the CMS plan (star) rating system, this section does not apply to FIDA Plans.

Section 30.10.1 – Referencing Star Ratings in Marketing Materials

Because FIDA Plans will be too new to measure under the CMS plan (star) rating system, this section does not apply to FIDA Plans.

Section 30.10.2 – Plans with an Overall 5-Star Rating

Because FIDA Plans will be too new to measure under the CMS plan (star) rating system, this section does not apply to FIDA Plans.

Section 40.6 – Hours of Operation Requirements for Marketing Materials

In addition to the requirements of this section, FIDA Plans must also provide the phone number and hours of operation information for the State's enrollment broker at least once in any marketing materials that are provided prior to or after the time of enrollment and where a customer service number is provided for current and prospective FIDA Plan Participants to call.

Section 40.8 – Marketing of Multiple Lines of Business

We clarify that organizations offering both FIDA Plans and non-FIDA Plan Medicare health plan options in a service area may only market FIDA Plan offerings in their FIDA Plan materials.

Section 40.8.1 – Multiple Lines of Business – General Information

We clarify that FIDA Plans may not send marketing materials to their current FIDA Plan Participants about other Medicare products they offer, and they may not send information requesting Participants' prior authorization to receive materials about other Medicare products they offer. Such materials may only be sent when a current FIDA Plan Participant proactively makes a request for information about other Medicare products.

However, consistent with section 40.8 of the MMG, organizations that offer non-FIDA Plan and FIDA Plan products may send their current non-FIDA Plan Participants (for example, those enrolled in Medicaid managed long-term care products) materials to promote their FIDA Plan offerings.

Section 40.8.3 – Marketing Materials from Third Parties that Provide Non-Benefit/Non-Health Services

In addition to the guidance in this section, we clarify that materials produced by the State and distributed by New York's enrollment broker do not constitute non-benefit/non-health service-providing third party marketing materials. Therefore, such materials do not need to be submitted to the plan sponsor for review prior to their use. As indicated in the CMS "Announcement of Calendar Year (CY) 2013 Medicare Advantage Capitation Rates and Medicare Advantage and Part D Payment Policies and Final Call Letter" released on April 2, 2012, the CMS MMG do not apply to communications by state governments, and materials created by the State do not need to be reviewed or submitted in HPMS. However, CMS and the State agree to work together in the development of these materials.

Section 40.10 – Standardization of Plan Name Type

As is the case for other Medicare health plans, FIDA Plans are required to include the plan type in each plan's name using standard terminology consistent with the guidance provided in this section. CMS created the standardized plan type label "(Medicare-Medicaid Plan)" to refer generically to all plans participating in a Capitated Financial Alignment Demonstration. FIDA Plans must use the "(Medicare-Medicaid Plan)" plan type terminology following their plan name at least once on the front page or beginning of each marketing piece, consistent with the requirements of section 40.10 of the MMG.

CMS is unable to create state-specific plan type labels in HPMS for each state's demonstration plans; therefore, all FIDA Plans are referred to by the standardized plan name type "(Medicare-Medicaid Plan)" in CMS' external communications – e.g., the Medicare & You handbook and the Medicare Plan Finder tool on www.medicare.gov. However, New York requires each plan to use the term "Fully-Integrated Duals Advantage" (FIDA) Plan to refer to any FIDA Plan operating in New York. Thus, we clarify that FIDA Plans must only use the CMS standardized plan type "(Medicare-Medicaid Plan)" following their plan name once in their materials but can then use the FIDA Plan terminology thereafter.

In addition, the State also expects FIDA Plans to use the term FIDA in their plan name, as entered in HPMS and included in their marketing materials. For example, a FIDA Plan in New York would use "Acme Duals FIDA Plan" as its plan marketing name in all Participant materials.

In addition, we clarify that FIDA Plans in New York that offer Medicare Advantage products, including SNPs, in the same service area as their FIDA Plans, may not use the same plan marketing name for both those products, so as to prevent Participant confusion. Thus, for example, an organization offering both a SNP and a FIDA Plan in the same service area could not use the same name – e.g., Acme Duals Care (HMO SNP) – for its SNP product as for its FIDA Plan product – e.g., Acme Duals Care FIDA Plan (Medicare-Medicaid Plan).

Section 50.1 – Federal Contracting Disclaimer

This section is replaced with the following revised guidance:

Section 50.1 – Federal and State Contracting Disclaimer

42 CFR 422.2264, 423.2264

All marketing materials must include the statement that the FIDA Plan contracts with both the Federal and the State government. The following statement must be used:

> "<Plan's legal or marketing name> is a managed care plan that contracts with both Medicare and the New York State Department of Health (Medicaid) to provide benefits of both programs to Participants through the Fully Integrated Duals Advantage (FIDA) Demonstration."

NOTE: Radio and television and Internet banner ads do not need to include the Federal and State contracting disclaimer.

Section 50.2 – Disclaimers When Benefits Are Mentioned

This section is replaced with the following revised guidance:

Section 50.2 – Disclaimers When Benefits Are Mentioned

42 CFR 422.111(a), 422.111(b), 422.111(f), 423.128(b)

The following disclaimers must be used when benefit information is included in marketing materials:

> Only for summary documents like the Summary of Benefits (SB): "This is not a complete list. The benefit information is a brief summary, not a complete description of benefits. For more information contact the plan or read the Participant Handbook."
>
> "Limitations and restrictions may apply. For more information, call <plan name> <Participant Services> or read the <plan name> Participant Handbook."
>
> "Benefits, List of Covered Drugs, and pharmacy and provider networks may change from time to time throughout the year and on January 1 of each year."

Section 50.3 – Disclaimers When Plan Premiums Are Mentioned

This section does not apply to FIDA Plans, as FIDA Plans are not permitted to assess plan premiums, and States will pay Medicare Part B premiums on behalf of Medicare-Medicaid enrollees in FIDA Plans.

Section 50.4 – Disclaimer on Availability of Non-English Translations

This section is replaced with the following revised guidance:

> **Section 50.4 – Disclaimer on Availability of Non-English Translations**
>
> 42 CFR 422.2264(e), 423.2264(e)
>
> Plan sponsors that meet either: (1) Medicare's five (5) percent threshold for language translation (refer to section 30.7) or (2) the relevant Medicaid translation standard must place the following alternate language disclaimer on all materials:
>
> > "You can get this information for free in other languages. Call <toll-free number> and <TTY/TDD numbers> during <hours of operation>. The call is free."
>
> The alternate language disclaimer must be provided in the languages identified in section 30.5 of this guidance. The non-English disclaimer must be placed below the English version and in the same font size as the English version.
>
> NOTE: ID cards are excluded from this requirement.

Section 50.5 – Disclaimer on SNP Materials

We clarify that the prohibition on discussion of numeric Special Needs Plan (SNP) approval scores in marketing materials or press releases also applies to FIDA Plans. FIDA Plans may only include the following information related to their National Committee for Quality Assurance (NCQA) model of care approval in materials that reference their model of care:

> "<Plan name> has a Model of Care approved by the National Committee for Quality Assurance (NCQA) and the New York State Department of Health until <last contract year of NCQA and State approval of model of care> based on a review of <plan name>'s Model of Care."

Section 50.12 – Disclaimer for Plans Accepting Online Enrollment Requests

This section does not apply to FIDA Plans, as the Online Enrollment Center on the Medicare Plan Finder website is not available to FIDA Plans.

Section 50.13 – Disclaimer When Using Third Party Materials

This section does not apply to FIDA Plans because they are not permitted to distribute materials developed by a non-benefit/non-health service-providing third party entity that is not affiliated or contracted with the FIDA Plan.

Section 50.14 – Disclaimer When Referencing Star Ratings Information

Because FIDA Plans are too new to measure under the CMS plan (star) rating system, this section does not apply to FIDA Plans.

Section 50.18 – Disclaimer on Unsolicited Marketing Materials

In addition to required disclaimers in section 50 of the MMG and section 50 of this guidance, the following additional disclaimer is required for FIDA Plans.

As provided in section 70.5 of this guidance, FIDA Plans conducting permitted unsolicited marketing activities such as conventional mail and other print media are required to include the following disclaimer on all materials used for that purpose:

> "For information on <Plan name>, contact <Plan name> or the New York Enrollment Broker. To enroll or for other options for your health care, call the New York Enrollment Broker at 1-855-600-FIDA <TTY number> from <include hours and days of operation>, or visit <website URL>."

For purposes of this section, enrollment materials sent to passively enrolled individuals are not considered marketing through unsolicited contact.

Section 50.19 – Disclaimer on Participant Ombudsman

In addition to required disclaimers in section 50 of the MMG and section 50 of this guidance, the following additional disclaimer is required for FIDA Plans.

As provided in section 100.2 of this guidance, FIDA Plans must include on all marketing materials and plan websites the following disclaimer:

> "The State of New York has created a Participant Ombudsman Program to provide Participants free, confidential assistance on any services offered by <Plan Name>. The Participant Ombudsman may be reached toll-free at <toll-free number> or online at <website URL>."

Section 60.1 – Summary of Benefits (SB)

This section is replaced with the following revised guidance:

> **Section 60.1 – Summary of Benefits (SB)**
>
> 42 CFR 422.111(b)(2), 422.111(f), 423.128(b)(2)
>
> FIDA Plans must use the Summary of Benefits (SB) model document provided to New York FIDA Plans by CMS and the State. The SB must contain a concise description of the important aspects of enrolling in the plan, as well as the benefits offered under the plan, including applicable co-pays, applicable conditions and limitations, and any other conditions associated with receipt or use of benefits.
>
> The Multi-Language Insert must be included with the SB, and the SB must be sent in other languages, as required in section 30.5 if the Participant's primary language is known to be one of those languages.

Section 60.2 – ID Card Requirements

FIDA Plans are required to meet the ID card content requirements in sections 60.2, 60.2.1, and 60.2.2. We clarify, however, that FIDA Plans must issue a single ID card meeting these requirements for all services offered under the plan. Separate pharmacy and health benefits ID cards are not permitted. FIDA Plans must use the model ID card document provided to New York FIDA Plans by CMS and the State.

Section 60.4 – Directories

The pharmacy and provider directory requirements in sections 60.4, 60.4.1, 60.4.1.1, and 60.4.2 apply to FIDA Plans with the following modifications:

- FIDA Plans are required to make available a single, combined pharmacy/provider directory. Separate pharmacy and provider directories are not permitted;
- At the time of enrollment and then annually thereafter, FIDA Plans must mail a pharmacy/provider directory along with information on how to call the plan's customer service call center to request assistance with locating providers;
- The combined pharmacy/provider directory must include all network providers and pharmacies, regardless of whether they provide Medicare, Medicaid, or additional benefits;
- For FIDA Plans with multi-county service areas, the combined pharmacy/provider directory may be provided for all providers by county, provided the directory includes a disclaimer that the directory only includes providers in that particular county (or counties) and that the Participant may contact the plan's customer service call center to request assistance with locating providers in other counties or to request a complete pharmacy/provider directory; and
- FIDA Plans must use the model pharmacy/provider directory document provided to New York FIDA Plans by CMS and the State.

Section 60.5 – Formulary and Formulary Change Notice Requirements

The requirements of section 60.5, 60.5.1, 60.5.2, 60.5.3, 60.5.4, 60.5.5, and 60.5.6 apply to FIDA Plans with the following modifications:

- FIDA Plans must provide a comprehensive integrated formulary that includes Medicare and Medicaid outpatient prescription drugs and pharmacy products provided under the plan;

- FIDA Plans are only permitted to provide comprehensive formularies, not abridged formularies;

- FIDA Plans must use the model formulary document provided to New York FIDA Plans by CMS and the State; and

- Formulary change notices must be sent for any negative formulary change (as described in section 30.3.3, "Midyear Formulary Changes," and section 30.3.4, "Provision of Notice Regarding Formulary Changes," of Chapter 6 of the Prescription Drug Benefit Manual), regardless of whether the negative formulary change applies to an item covered under Medicare or Medicaid, or as an additional drug benefit under the plan. Consistent with the guidance in the MMG, this notice must be provided to affected Participants at least 60 calendar days prior to the change.

- When a FIDA Plan removes a drug from the formulary for safety reasons, the FIDA Plan not only must notify affected Participants in writing but also must call to notify affected Participants about the change.

Section 60.7 – Annual Notice of Change (ANOC) and Evidence of Coverage (EOC)

This section is replaced with the following revised guidance:

> **Section 60.7 – Annual Notice of Change (ANOC) and Evidence of Coverage (EOC) (Participant Handbook)**
>
> 42 CFR 422.111(a)(3), 422.111(d)(2), 423.128(a)(3)
>
> FIDA Plans are required to send an Annual Notice of Change (ANOC) summarizing all major changes to the plan's covered benefits from one contract year to the next prior to the beginning of the second contract year of the demonstration and annually thereafter. The FIDA Plan may send the ANOC and EOC (Participant Handbook) as a combined document or separately, as provided below.
>
> FIDA Plans must send the ANOC for Participant receipt by September 30 each year. The EOC (Participant Handbook) may be sent as a standalone document as follows:
>
> - FIDA Plans must send new Participants (whether they self-select into the Demonstration or are passively enrolled) an EOC (Participant Handbook) for Participant receipt by the end of the month preceding the month the enrollment will take effect (e.g., the document must be received by a Participant by June 30 for a July 1 effective enrollment date). For late-month enrollment transactions (those for which confirmation of enrollment is received less than eight (8) calendar days before the end of the month

prior to the effective date), FIDA Plans must send these materials no later than eight (8) calendar days from receipt of confirmation of enrollment. FIDA Plans should refer to the date of the Enrollment E-file to identify the start of the eight (8) calendar-day timeframe.

- After the time of initial enrollment, FIDA Plans must annually send an EOC (Participant Handbook) for Participant receipt by December 31. FIDA Plans choosing this option (rather than a combined ANOC/EOC (Participant Handbook) by September 30) must also send an SB with the ANOC.

New Participants with an effective date of October 1, November 1, or December 1 should receive both an EOC (Participant Handbook) for the current contract year, as well as a combined ANOC/EOC (Participant Handbook) document for the upcoming contract year. We clarify that, for these Participants, the combined ANOC/EOC (Participant Handbook) for the upcoming year, as well as the formulary, and pharmacy/provider directory for the upcoming year, must be received by one month after the effective date of enrollment, but not later than December 15th.

Additional materials beyond the materials required to be sent with the ANOC/EOC or ANOC and EOC may not be included with the ANOC, EOC, or ANOC/EOC mailing.

To ensure that FIDA Plans are mailing their annual ANOC/EOC (Participant Handbook) in a timely manner, plan sponsors must indicate the actual mail date in HPMS within fifteen (15) calendar days of mailing. This includes mail dates for alternate materials. FIDA Plans that mail in waves should enter the actual date for each wave. For instructions on meeting this requirement, refer to the *Update Material Link/Function* section of the Marketing Review Users Guide in HPMS.

FIDA Plans must use the ANOC/EOC (Participant Handbook) errata model to notify Participants of any errors in their original mailings.

Section 60.8 – Other Mid-Year Changes Requiring Participant Notification

The notification requirements for mid-year Medicare benefit changes described in this section are also applicable to mid-year Medicaid or required demonstration additional benefit changes.

Section 70.1 – Promotional Activities

Under the New York demonstration, FIDA Plans may not offer financial or other incentives of any kind to induce potential FIDA Plan Participants to enroll with the FIDA Plan or to refer a friend, neighbor, or other person to enroll with the plan. This includes promotional items offered at FIDA Plan-targeted events. Promotional items may only be offered to current FIDA Plan Participants, consistent with the guidance in section 70.1 of the MMG.

Section 70.1.1 – Nominal Gifts

Under the New York demonstration, FIDA Plans may not offer financial or other incentives of any kind to induce potential FIDA Plan Participants to enroll with the FIDA Plan or to refer a friend, neighbor, or other person to enroll with the plan. This includes nominal gifts provided at FIDA Plan-targeted events. Therefore, the guidance in section 70.1.1 of the MMG does not apply to FIDA Plans in the New York

demonstration because nominal gifts are not permitted. As specified in section 70.1 of this guidance, promotional activities for current FIDA Plan Participants are permissible. FIDA Plans may also offer rewards and incentives to current FIDA Plan Participants, as provided in section 70.2 of the MMG.

Section 70.5 – Marketing Through Unsolicited Contacts

In addition to the requirements of section 70.5, FIDA Plans conducting permitted unsolicited marketing activities such as conventional mail and other print media are required to include the disclaimer in section 50.18 of this guidance on all materials used for that purpose. For purposes of this section, enrollment materials sent to passively enrolled individuals are not considered marketing through unsolicited contact.

Section 70.6 – Telephonic Contact

We clarify that FIDA Plans may not call current FIDA Plan Participants to promote other Medicare plan types. Information about other Medicare plan types can only be provided at the proactive request of a current FIDA Plan Participant. However, consistent with section 70.6 of the MMG, organizations that offer non-FIDA Plan and FIDA Plan products may call their current non-FIDA Plan Participants (for example, those in Medicaid managed long-term care products) to promote their FIDA Plan offerings. Callers with questions about other Medicare program options should be warm transferred to 1-800-Medicare or to the State Health Insurance Assistance Program (i.e., Health Insurance Information, Counseling, and Assistance, or HICAP) for information and assistance.

Section 70.7 – Outbound Enrollment and Verification Requirements

Since all enrollments into FIDA Plans are submitted by the State's enrollment broker, the requirements of this section do not apply.

Section 70.9 - Marketing/Sales Events and Appointments

In addition to requirements in this section of the MMG, the FIDA Plan must convene all educational and marketing events at sites within the plan's service area that are physically accessible to all Participants or potential FIDA Plan Participants, including persons with disabilities and persons using public transportation.

Section 70.9.2 – Personal/Individual Marketing Appointments

Since New York FIDA Plans are not allowed to market directly to individual potential FIDA Plan Participants, the requirements of this section do not apply.

Section 70.11 – Marketing in the Health Care Setting

In addition to the requirements of this section, we clarify that staff in health care settings such as, but not limited to, long-term care facilities, day care settings, and chronic and psychiatric hospitals for FIDA Plan-eligible individuals (post-stabilization) may provide residents meeting FIDA Plan eligibility criteria with an explanatory brochure for each FIDA Plan with which the facility contracts.

Section 70.11.5 – Comparative and Descriptive Plan Information Provided by a Non-Benefit/Non-Health Service-Providing Third Party

We clarify that the guidance in this section referring to materials provided by a "State agency" also applies to materials produced and/or distributed by New York's enrollment broker.

Section 80.1 – Customer Service Call Center Requirements

This section is replaced with the following revised guidance:

> **Section 80.1 – Customer Service Call Center Requirements**
>
> 42 CFR 422.111(h)(1), 423.128(d)(1)
>
> FIDA Plans must operate a toll-free call center for both current and prospective FIDA Plan Participants seven (7) days a week, at least from 8:00 A.M. to 8:00 P.M. ET, except as provided below. During this time period, current and prospective FIDA Plan Participants must be able to speak with a live customer service representative. For CY 2015, FIDA Plans may use alternative technologies on Saturdays, Sundays, and Federal holidays in lieu of having live customer service representatives. For example, a FIDA Plan may use an interactive voice response (IVR) system or similar technologies to provide the required information listed below, and/or allow a Participant to leave a message in a voice mail box. A customer service representative must then return the call in a timely manner, no more than one business day later.
>
> Call centers must meet the following operating standards:
>
> - Provide information in response to inquiries outlined in sections 80.2 – 80.4. If callers are transferred to a third party for provision of the information listed in sections 80.2 and 80.4, all other requirements in section 80.1 apply to the third party.
> - Follow an explicitly defined process for handling customer complaints.
> - Provide interpreter service to all non-English speaking, limited English proficient and hearing impaired Participants.
> - Inform callers that interpreter services are "free."
> - At a minimum, provide TTY service to all hearing impaired beneficiaries but also provide the technological equivalent, such as texting or video-conferencing.
> - Limit average hold time to two (2) minutes. The average hold time is defined as the time spent on hold by the caller following the IVR system, touch-tone response system, or recorded greeting and before reaching a live person.
> - Answer eighty (80) percent of incoming calls within thirty (30) seconds.
> - Limit the disconnect rate of all incoming calls to five (5) percent.

For Pharmacy Technical Help or Coverage Determinations and Appeals Call Center requirements refer to Appendix 4 in the MMG.

Section 80.2 – Requirements for Informational Scripts

We clarify that informational calls to plan call centers that become sales/enrollment calls (i.e., one in which the main purpose of the call shifts from providing factual information about a plan to one in which plan staff steer the prospective FIDA Plan Participant to the plan or in which enrollment is requested) at the proactive request of the Participant must be transferred to New York's enrollment broker. Prior to transferring an informational call to New York's enrollment broker, the Participant must be informed he/she is being transferred. We also clarify that FIDA Plans may not ask callers if they would like to receive information about other Medicare lines of business they offer. Such information may only be provided at the proactive request of a Participant.

Section 90 – The Marketing Review Process

Any references in this section, and in all subsections thereunder, to CMS in its role in reviewing marketing materials are also references to the State for purposes of FIDA Plan marketing material review.

Section 90.2.3 – Submission of Multi-Plan Materials

This section does not apply to FIDA Plans.

Section 90.3 – HPMS Material Statuses

We clarify that, for purposes of FIDA Plan materials, there is no "deeming" of materials requiring either a dual review by CMS and the State or a one-sided State review, and materials remain in a "pending" status until the State and CMS reviewer dispositions match. Materials in a "pending" status are not approved for use in the market. However, CMS and State marketing reviewers have standard operating procedures for ensuring materials are reviewed in a timely manner and differences in dispositions are resolved expeditiously. Materials that require a CMS-only review deem after the respective 10- or 45-day review period. All other guidance in this section and its subsections applies.

90.3.1 – Approved

In addition to the guidance in this section, the FIDA Plan submitting modifications to a previously approved marketing material must submit a cover document that precisely lists all proposed wording changes to the previously approved marketing material. This will expedite the review and approval process.

Section 90.4 – Resubmitting Previously Disapproved Pieces

In addition to the requirements of this section, and in order to expedite the re-review and approval process, FIDA Plans resubmitting previously disapproved pieces must submit a cover document that precisely lists all proposed wording changes to the previously disapproved materials.

Section 90.5 – Time Frames for Marketing Review

We clarify that, for purposes of FIDA Plan materials, there will be no "deeming" of materials requiring either a dual review by CMS and the State or a one-sided State review, and materials will remain in a "pending" status until the State and CMS reviewer dispositions match. Materials in a "pending" status are not approved for use in the market. However, CMS and State marketing reviewers will have standard operating procedures for ensuring materials are reviewed in a timely manner and differences in dispositions are resolved expeditiously. Materials that require a CMS-only review will deem after the respective 10- or 45-day review period. All other guidance in this section and its subsections applies.

Section 90.6.1 – Restriction on the Manual Review of File & Use Eligible Materials

This section does not apply to FIDA Plans.

Section 100.2 – Required Content

In addition to the requirements outlined in this section, FIDA Plans must also include on their websites a direct link to the State's enrollment broker. FIDA Plans must also include information on the potential for contract termination (as required under 42 CFR 422.111(f)(4)), and information that materials are published in alternate formats (e.g., large print, Braille, audio CD). As provided in Appendix 2 of the MMG, plan websites must be 508 compliant, and FIDA Plans must attest that they comply with all applicable requirements when they submit their websites for review in HPMS.

FIDA Plans must also include a disclaimer, as provided in section 50.19 of this guidance, on all marketing materials and on their website specifying the availability of the Participant Ombudsman to provide Participants with free assistance in handling any issues relating to accessing services. FIDA Plans must include the toll-free number and the website for the Participant Ombudsman.

Section 100.2.1 – Required Documents for All Plans/Part D Sponsors

Because FIDA Plans will be too new to measure under the CMS plan (star) rating system, FIDA Plans will not be required to post a CMS plan ratings document on their websites.

Section 100.2.2 – Required Documents for Part D Sponsors

FIDA Plans will not be required to post the LIS Premium Summary Chart, as this document will not be applicable to FIDA Plans.

Section 100.3 – Electronic Enrollment

This section is not applicable to FIDA Plans. The Online Enrollment Center will not be enabled for FIDA Plans, and FIDA Plans will not be permitted to directly enroll individuals through a secure Internet website. All enrollments will be processed via the State's enrollment broker.

Section 100.5 – Online Formulary, Utilization Management (UM), and Notice Requirements

Formulary change notices applicable to all formulary changes (not just Part D drug changes) must be maintained on FIDA Plans' websites as required in this section.

Section 120 – Marketing and Sales Oversight and Responsibilities

The provisions in this section and all its subsections applicable to independent agents/brokers do not apply to FIDA Plans since the use of independent agents/brokers is not permitted. All FIDA Plan enrollments are processed by the State's enrollment broker. We clarify that CMS does not regulate compensation of employed agents.

Section 150 – Use of Medicare Mark for Part D Sponsors

We clarify that FIDA Plans have been required to sign a licensing agreement to use the official Medicare Mark as part of the three-way contract, rather than through the HPMS contracting module. All other guidance in section 150 and all its subsections applies.

Section 160.1 – When Prior Authorization from the Beneficiary is Not Required

We clarify that FIDA Plans may not send marketing materials to current FIDA Plan Participants about other Medicare products they offer, and they may not send information requesting Participants' prior authorization to receive materials about other Medicare products they offer. Such materials may only be sent when a current FIDA Plan Participant proactively makes a request for information about other Medicare products.

Section 160.4 – Sending Non-plan and Non-health Information Once Prior Authorization is Received

The disclaimer described in this section should be modified as follows:

> "Neither Medicare nor New York Medicaid has reviewed or endorsed this information."