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**MEDICARE-MEDICAID COORDINATION OFFICE**

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**DATE:** August 20, 2018

**TO:** Medicare-Medicaid Plans

**FROM:** Lindsay P. Barnette  
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**SUBJECT:** Revised Contract Year 2019 Marketing and Beneficiary Communications  
Guidance for Medicare-Medicaid Plans

This memorandum replaces our August 3, 2018, HPMS memorandum, “Contract Year 2019 Marketing and Beneficiary Communications Guidance for Medicare-Medicaid Plans.” However, we note that this revised guidance modifies the previous August 3, 2018 guidance only in two areas:

- Adds section 90.4 (Submission of Websites and Webpages for Review) with modified guidance for MMPs as a result of the August 10, 2018, HPMS email, “Updates to the Website Requirements in the Medicare Communications and Marketing Guidelines.”
- Clarifies requirements of Appendix 3 (Pre-Enrollment Checklist) for California County Organized Health Systems (COHS) plans.

These changes are noted in red font in this memorandum.

We strongly encourage Medicare-Medicaid Plans (MMPs) to take into account not only the guidance in this memorandum and the Medicare Communications and Marketing Guidelines but also those waived or modified requirements encompassed in the CY 2018 State-Specific Marketing Guidance documents posted at: <https://www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/FinancialAlignmentInitiative/MMPInformationandGuidance/MMPMarketingInformationandResources.html>. Full revisions to the State-specific Marketing Guidance for CY 2019 for each state will be provided at a later date.

On July 20, 2018, CMS issued the Medicare Communications and Marketing Guidelines (MCMG) for Contract Year (CY) 2019, which is available on this webpage: <https://www.cms.gov/Medicare/Health-Plans/ManagedCareMarketing/FinalPartCMarketingGuidelines.html>. As a result of the

implementation of CMS-4182-F, Policy and Technical Changes to the Medicare Advantage, Medicare Cost Plan, Medicare Fee-for-Service, the Medicare Prescription Drug Benefit Programs, and the PACE program, which may be found in the Final Rule published April 16, 2018 (see <https://www.federalregister.gov/documents/2018/04/16/2018-07179/medicare-program-contract-year-2019-policy-and-technical-changes-to-the-medicare-advantage-medicare>) as well as feedback from stakeholders, there were a number of updates to guidance and to the timing and format of communications and marketing materials for enrollees and prospective enrollees for CY 2019. Over the coming months, we will work with states in the Financial Alignment Initiative capitated model demonstrations to jointly update and issue CY 2019 State-specific Marketing Guidance documents for MMPs.

In this memorandum, we provide information to Medicare-Medicaid Plans (MMPs) needed to address the most critical issues related to the submission of materials and the Annual Election Period (AEP). Guidance in this memorandum is organized sequentially to correspond with sections as numbered in the CY 2019 MCMG. In addition, where appropriate, we refer MMPs to specific sections of the CY 2018 State-specific Marketing Guidance documents that are still applicable or that are being modified based on MCMG guidance.

The following sections of the CY 2019 MCMG are modified as follows for MMPs.

**Section 20 - Communications and Marketing Definitions**  
(See section 20 of the CY 2018 State-specific Marketing Guidance)

MMPs are subject to marketing and beneficiary communications applicable to Medicare Advantage plans in 42 CFR Parts 422 and 423, as well as those applicable to Medicaid managed care organizations. CMS has developed a joint review process for MMP beneficiary materials under each Financial Alignment Initiative capitated model demonstration that combines state and CMS review requirements and parameters. Given these differences, CMS will continue to consider all CY 2019 MMP materials to be marketing materials as defined prior to the implementation of CMS-4182-F. We provide additional detail about materials subject to submission in the guidance related to section 90.1.1 of the MCMG below.

**Section 80.2 - Customer Service Call Center Hours of Operations**  
(See section 80.1 of the CY 2018 State-specific Marketing Guidance)

MMPs must continue to follow the guidance in section 80.1 of the CY 2018 State-specific Marketing Guidance documents.

**Section 90.1 - Material Identification**

MMPs must continue to follow the guidance on marketing material identification (ID) numbers as described in section 40.1 of the CY 2018 MMG. As a result, the second paragraph of this section of the MCMG is modified as follows for MMPs:

The material ID is made up of two parts: (1) MMP contract number, (i.e., H number) followed by an underscore; and (2) any series of alpha numeric characters chosen at the discretion of the MMP. Use of the material ID on marketing materials must be

immediately followed by the status of either approved or accepted (e.g., H1234\_drugx38 Approved). Please note that MMPs should include an approved status only after the material is approved and not when submitting the material for review.

The remainder of section 90.1 of the MCMG applies to MMPs, including the requirement that non-English and alternate format materials based on previously created materials may have the same material ID as the material on which they are based.

### **Section 90.1.1 - Materials Subject to Submission**

As described previously in this memorandum, CMS will continue to consider all MMP materials to be marketing materials as defined prior to the implementation of CMS-4182-F. Consequently, MMPs must continue to submit all CY 2019 beneficiary materials in the Health Plan Management System (HPMS) Marketing Module.

We note that, effective August 2, 2018, CMS has revised and streamlined a number of State-specific marketing codes in the HPMS Marketing Module for CY 2019. Code revisions include the following:

- Addition of material replacement functionality for certain materials (see section 90.2 of the MCMG and this memorandum for more detail).
- Retirement of combined Annual Notice of Change (ANOC)/Evidence of Coverage (EOC) (Member Handbook) codes. We note that starting in CY 2019, ANOCs and EOCs (Member Handbooks) must be submitted separately. Actual Mail Dates (AMDs) will be entered only for ANOCs as described in section 100.4 of the MCMG.
- Updates to the code usage instructions for the ANOC and EOC (Member Handbook) codes.
- Changes in review parameters of some codes (e.g., a number of CMS-only review codes have been changed to forced file and use status, and a number of dual review codes have been changed to state-only review status).
- Updates to the code that was previously used for Provider and Pharmacy Directory and Formulary notices to allow MMPs to use it for EOC (Member Handbook) notices. MMPs may use this code for single or combined notices to members about the availability of the directory, formulary, and handbook.

We encourage MMPs to familiarize themselves with the specific review parameters and timeframes for their materials using the Marketing Code Look-up functionality in the HPMS Marketing Module.

### **Section 90.2 - Material Replacement**

This section of the MCMG applies to MMPs with the exception of star ratings documents and enrollment scripts. MMPs must use the material replacement functionality to replace the subset of materials noted in section 90.2 of MCMG when those materials require correction for reasons unrelated to plan error. This replaces the previous instruction to use the Service Area/Low Income Subsidy (SA/LIS) materials functionality workaround in such cases.

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

**(CA, IL, MA, MI, and NY MMPs only)** The guidance in section 90.4 of the MCMG, as revised on August 10, 2018, applies, with the following modification:

- All website content must be submitted in HPMS as a File & Use submission under the Internet Website marketing material code for CA, IL, MA, MI, and NY.

**(OH, RI, SC, and TX MMPs only)** MMPs must continue to follow the guidance on website submissions as described in section 90.2.2 of the CY 2018 MMG. Website content must be submitted in HPMS under the Internet Website marketing material code for OH, RI, SC, and TX MMPs for prospective state-only review. However, as provided in section 90.2.2 of the CY 2018 MMG, MMPs may make the website available for public use during the state review period.

## **Section 90.6 - HPMS Material Statuses**

We note that the “Non-Marketing” status is not available for Joint Review Process (JRP) marketing codes in HPMS.

## **Section 100.2.1 - Notification of Availability of Electronic Materials**

The guidance in this section regarding plan flexibility to send members a notice in lieu of mailing hard copies of the Provider and Pharmacy Directory and Formulary applies to:

- MMPs in all states with respect to the Provider and Pharmacy Directory and Formulary; and
- MMPs in all states except California with respect to the Member/Participant Handbook (EOC)

MMPs in CA must send a hard copy of the Member Handbook (EOC) to new members; however, they may send existing (i.e., not new) enrollees a notice informing them how to access the Member Handbook (EOC) electronically instead of mailing hard copies of the document.

## **Section 100.4 - List of Required Materials**

**(See Introduction and sections 30.5, 30.7, 60.1, 60.2, 60.4, 60.5 (as applicable), 60.6, and 60.7 of the CY 2018 State-specific Marketing Guidance)**

MMPs must follow the guidance in section 100.4 of the MCMG with the following modifications:

- For CY 2019, CMS will continue to consider all MMP materials to be marketing materials as defined prior to the implementation of CMS-4182-F. Consequently, MMPs must continue to submit all beneficiary materials – regardless of their designation as marketing or communications materials in section 100.4 of the MCMG – in the HPMS Marketing Module. We encourage MMPs to familiarize themselves

with the specific review parameters and timeframes for their materials using the Marketing Code Look-up functionality in the HPMS Marketing Module since CMS recently implemented a number of changes to those codes (see section 90.1.1 of this memorandum for more detail).

- MMPs must continue to use standardized State-specific models (see <https://www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/FinancialAlignmentInitiative/MMPInformationandGuidance/MMPMarketingInformationandResources.html> for CY 2019 versions) for the following materials:
  - ANOC
  - Member Handbook (EOC)
  - Demonstration-specific appeals and grievance notices, including the Integrated Denial Notice (**Note:** MMPs should send these materials to enrollees consistent with the timelines in their specific three-way contracts.)
  - Plan-delegated enrollment/disenrollment notices (including Welcome Letter Exhibits)
  - Prescription drug Explanation of Benefits (**MI, NY FIDA, NY FIDA-IDD, and SC MMPs only**)
  - List of Covered Drugs (Formulary)
  - Member ID Card
  - Non-renewal/termination notices
  - Part D notices (excluded provider letter, transition notice, prescription transfer letter) (**NY FIDA and NY FIDA-IDD MMPs only**)
  - Provider and Pharmacy Directory
  - Pre-enrollment checklist, as detailed in the Appendix 3 section of this memorandum (**CA County Organized Health Systems (COHS) MMPs only**)
  - Summary of Benefits (**Note:** The guidance in Appendix 5 of the MCMG does not apply to MMPs.)
  - ANOC and Member Handbook (EOC) errata

The Member Handbook (EOC) may be provided electronically as detailed in section 100.2.1 of this memorandum.

In addition, we note that MMPs are no longer required to send the SB with the ANOC. This is now optional per section 100.4 of the MCMG.

MMPs should carefully consult the MCMG as well as previous HPMS guidance memoranda accompanying the release of their CY 2019 State-specific model materials since timelines for enrollee receipt and posting of certain materials on plan websites have changed (see section 70.1.2 of the MCMG for more information about required website posting dates for new and renewing plans). MMPs are required to follow the MCMG enrollee receipt timelines and plan website requirements. However, we note that the guidance on required materials for new enrollees in section 30.7 of State-specific Marketing Guidance documents continues to apply,

with the additional flexibility regarding provision of the Member Handbook (EOC) noted in section 100.2.1 of this memorandum.

We also note that requirements related to translation of materials into non-English languages have changed in the MCMG and are detailed in section 100.4. MMPs should carefully review the translation requirements in section 100.4 since these include (and extend beyond) the materials required to be translated in section 30.5 of the CY 2018 State-specific Marketing Guidance documents.

**Section 110 - Agent/Broker Activities, Oversight, and Compensation Requirements  
(See section 120 of the CY 2018 State-specific Marketing Guidance)**

**(CA MMPs only)** As detailed in the June 11, 2018 HPMS memorandum, “California MMPs: Update to Agent/Broker Compensation Policy for Contract Year 2019,” for CY 2019 enrollments, California MMPs approved by the California Department of Health Care Services will be permitted to use and compensate independent agents/brokers for MMP enrollments consistent with Section 110 of the MCMG.

**(CA and TX MMPs only)** The flexibility to compensate independent agents and brokers in the two specific scenarios detailed in section 120 of the CY 2018 California and Texas State-specific Marketing Guidance documents will continue to be available in CY 2019.

**Appendix 2 – Disclaimers  
(See Appendix 5 of the CY 2018 State-specific Marketing Guidance)**

Each CY 2018 State-specific Marketing Guidance document provides guidance on variations in disclaimer requirements relative to the CY 2018 MMG. As a result of changes in required disclaimers in the MCMG applicable to CY 2019 materials, we clarify in the chart below how MMP disclaimers will be applied relative to current guidance in the MCMG as well as previous modifications made in State-specific Marketing Guidance documents.

**Note:** If a disclaimer is not specifically referenced in the chart below, MMPs should follow the MCMG guidance on disclaimers in Appendix 2. Any additional State-specific disclaimers in CY 2018 State-specific Marketing Guidance documents will continue to apply in CY 2019.

Disclaimer	Required MMP Disclaimer Language	MMP Disclaimer Instructions
Federal Contracting	MMPs must use the Federal-State contracting disclaimer language in their CY 2018 State-specific Marketing Guidance.	Required on materials as described in the “Applicable Documents and Notes” column in Appendix 2 of the MCMG

<b>Disclaimer</b>	<b>Required MMP Disclaimer Language</b>	<b>MMP Disclaimer Instructions</b>
Benefits – “This is not a complete list...”	MMPs must use the disclaimer language in their CY 2018 State-specific Marketing Guidance.	Required on the SB and all materials with 10 or more benefits except the Member Handbook (EOC)
Benefits – “Limitations, [, copays,] and restrictions may apply...”	This disclaimer is no longer required to be included in MMP materials starting in CY 2019.	N/A
Benefits – “Benefits [and/or copayments] may change on January 1 of each year.”	This disclaimer is no longer required to be included in MMP materials starting in CY 2019.	N/A
Availability of Non-English Translations	MMPs must use the disclaimer language in their CY 2018 State-specific Marketing Guidance with the addition of “ATTENTION:” at the beginning of the disclaimer.	Required on materials as described in the “Applicable Documents and Notes” column in Appendix 2 of the MCMG
Plan Premiums	This disclaimer is no longer required to be included in MMP materials starting in CY 2019.	N/A
Plan Online Enrollment Center	This disclaimer does not apply to MMPs.	N/A
Star Ratings	This disclaimer does not apply to MMPs.	N/A
Materials Developed by a Third Party	<ul style="list-style-type: none"> <li>• SC MMPs must use the disclaimer language in the MCMG.</li> <li>• CA and TX MMPs must use the disclaimer language in their CY 2018 State-specific Marketing Guidance.</li> <li>• This disclaimer does not apply to IL, MA, MI, NY FIDA, NY FIDA-IDD, OH, and RI MMPs.</li> </ul>	Required on materials as described in the “Applicable Documents and Notes” column in Appendix 2 of the MCMG for SC, CA, and TX MMPs

Disclaimer	Required MMP Disclaimer Language	MMP Disclaimer Instructions
Part D Sponsors with Limited Access to Preferred Cost-Sharing Pharmacies	This disclaimer does not apply to MMPs.	N/A
NCQA SNP Approval	This disclaimer is no longer required to be included in MMP materials starting in CY 2019.	N/A
Extra Help	This disclaimer is no longer required to be included in MMP materials starting in CY 2019.	N/A
Provider and Pharmacy Network and Formulary Change	This disclaimer is no longer required to be included in MMP materials starting in CY 2019.	N/A

**Appendix 3 - Pre-Enrollment Checklist**

**(CA COHS MMPs only)** The requirements of Appendix 3 apply only to COHS MMPs in California. COHS MMPs should follow the guidance in Appendix 3 with the following modifications:

- Delete the following language, “In addition to your monthly plan premium, you must continue to pay your Medicare Part B premium. This premium is normally taken out of your Social Security check each month.”
- Revise the following language from, “Benefits, premiums and/or copayments/co-insurance may change on January 1, [insert year]” to “Benefits and/or *[insert if applicable: copays]* may change on January 1, [insert year].”
- Add the following bullet, “This plan is a Medicare-Medicaid Plan (MMP). Your ability to enroll will be based on verification that you are entitled to both Medicare and Medicaid.” Plans must revise references to “Medicaid” to “Medi-Cal,” the State-specific name for the program.
- **Modify the references to “Evidence of Coverage” to “Member Handbook (Evidence of Coverage).”**
- **Modify the references to “provider directory” and “pharmacy directory” to “Provider and Pharmacy Directory.”**

**COHS MMPs should submit this document as a File & Use submission in HPMS under code 15170 - (CA) COHS Plan Pre-Enrollment Checklist.**

## Other Considerations

In addition to the areas discussed above, where the requirements are modified for MMPs relative to the MCMG, we highlight below areas of the CY 2019 MCMG that have been significantly modified relative to the CY 2018 MMG and that MMPs are required to follow:

- Section 70.1 - Plan/Part D Sponsor Required Websites
- Section 90.3 - Non-English Language and Alternate Format Materials
- ~~Section 90.4 - Submission of Websites and Webpages for Review~~

Again, we note that this memorandum contains the most crucial information MMPs need to address issues related to the submission of materials and the AEP. Additional guidance will be provided at a later date. For any questions about the contents of this memorandum, please contact your Contract Management Team or the Medicare-Medicaid Coordination Office at [MMCOCapsModel@cms.hhs.gov](mailto:MMCOCapsModel@cms.hhs.gov).