

**Draft CY 2014 Marketing Guidance for New York’s Medicare-Medicaid Plans**  
**Released for Comment: December 18, 2013**

**Introduction**

All Medicare Advantage-Prescription Drug (MA-PD) plan sponsor requirements in the CY 2014 Medicare Marketing Guidelines (Chapter 3 of the Medicare Managed Care Manual and Chapter 2 of the Prescription Drug Benefit Manual), 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.<sup>1</sup>

This guidance document provides information only about those sections of the Medicare Marketing Guidelines (MMGs) that are not applicable or that would be different for MMPs in New York; therefore, this guidance document should be considered an addendum to the CY 2014 MMGs. This MMP guidance will be applicable to all marketing done for CY 2014 benefits. The table below summarizes those sections of the CY 2014 MMGs that are clarified, modified, or replaced for New York MMPs in this guidance.

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

<b>Medicare Marketing Guidelines (MMGs) Section</b>	<b>Change in this Guidance Document</b>
Section 10 – Introduction	Clarifies guidance on marketing start dates for CY 2014. Specifies requirements for a Marketing Plan.
Section 30.5 – Requirements Pertaining to Non-English Speaking Populations	Clarifies the requirements of this section for MMPs.
Section 30.5.1 – Multi-Language Insert	Clarifies the requirements of this section for MMPs.
Section 30.6 – Required Materials with an Enrollment Form	Clarifies that the requirements of this section are not applicable to MMPs.
Section 30.7 – Required Materials for New and Renewing Members at Time of Enrollment and	Replaces current guidance in MMGs with new guidance for MMPs.

<sup>1</sup> Any requirements for Special Needs Plan (SNPs), Private Fee-for-Service (PFFS) plans, Preferred Provider Organizations (PPOs), and Section 1876 Cost-Based Plans (cost plans) in the Medicare Marketing Guidelines do not apply unless specifically noted in this guidance.

Thereafter	
Section 30.10 – Star Ratings Information from CMS	Clarifies that the requirements of this section are not applicable to MMPs.
Section 30.10.1 – Referencing Star Ratings in Marketing Materials	Clarifies that the requirements of this section are not applicable to MMPs.
Section 30.10.2 – Plans with an Overall 5-Star Rating	Clarifies that the requirements of this section are not applicable to MMPs.
Section 40.6 – Hours of Operation Requirements for Marketing Materials	Adds new requirements for MMPs 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 MMP and non-MMP products in a service area may not market the non-MMP products in the MMP marketing materials.
Section 40.8.3 – Marketing Materials from Third Parties that Provide Non-Benefit/Non-Health Services	Clarifies that these requirements of this section do not apply to materials produced by the State and the State’s enrollment broker. Added a new prohibition on the use of materials developed by third parties that provide non-benefit/non-health service materials for MMPs.
Section 40.10 – Standardization of Plan Name Type	Clarifies the requirements of this section for MMPs.
Section 50.1 – Federal Contracting Disclaimer	Replaces current disclaimer in this section with a new Federal-State disclaimer for MMPs.
Section 50.2 – Disclaimers When Benefits are Mentioned	Replaces current disclaimers in this section with new disclaimers for MMPs.
Section 50.3 – Disclaimers When Plan Premiums are Mentioned	Clarifies that the requirements of this section are not applicable to MMPs.
Section 50.4 – Disclaimer on Availability of Non-English Translations	Replaces current disclaimer in this section with a new disclaimer for MMPs.

Section 50.5 – SNP Materials	Clarifies that MMPs 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 MMPs.
Section 50.12 – Disclaimer for Plans Accepting Online Enrollment Requests	Clarifies that the requirements of this section are not applicable to MMPs.
Section 50.13 – Disclaimer When Using Third Party Materials	Clarifies that the requirements of this section are not applicable to MMPs.
Section 50.14 – Disclaimer When Referencing Star Ratings Information	Clarifies that the requirements of this section are not applicable to MMPs.
Section 60.1 – Summary of Benefits	Replaces current guidance in this section with new guidance for MMPs.
Section 60.2 – ID Card Requirements	Clarifies the requirements of this section for MMPs.
Section 60.4 – Directories	Clarifies the requirements of this section for MMPs and provides additional flexibility regarding the requirements for providing MMP directories to enrollees at the time of enrollment and thereafter.
Section 60.5 – Formulary and Formulary Change Notice Requirements	Clarifies the requirements of this section for MMPs. 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 MMPs.
Section 60.8 – Other Mid-Year Changes Requiring Enrollee Notification	Extends the requirements of this section to mid-year changes in Medicaid benefits.
Section 70.1 – Promotional Activities	Clarifies that promotional activities, rewards, incentives and nominal gifts may be used only for current members and at targeted educational events. Financial or other incentives are not permitted for purposes of inducing enrollees to enroll in the MMP.

Section 70.1.1 – Nominal Gifts	Clarifies that promotional activities, rewards, incentives and nominal gifts may be used only for current members and at targeted educational events. Financial or other incentives are not permitted for purposes of inducing enrollees to enroll in the MMP.
Section 70.5 – Marketing Through Unsolicited Contacts	Clarifies that, in addition to the requirements of this section, New York’s enrollment broker information should be included on marketing materials under certain circumstances.
Section 70.6 – Telephonic Contact	Clarifies that MMPs may not call current members to promote other Medicare plan types.
Section 70.7 – Outbound Enrollment and Verification Requirements	Clarifies that the requirements of this section are not applicable to MMPs.
Section 70.9 - Marketing/Sales Events	Adds new requirements for MMPs 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 MMPs.
Section 70.11 – Marketing in the Health Care Setting	Extends the requirements of this section to MMPs in long-term care facilities.
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 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 MMPs.
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 Multiplan Materials	Clarifies that the requirements of this section are not applicable to MMPs
Section 90.3 – Material Status;	Clarifies the requirements of these sections with respect to the lack of “deeming” for jointly reviewed materials.
Section 90.5 – Time Frames for Marketing Review	Clarifies the requirements of these sections with respect to the lack of “deeming” for jointly reviewed materials.
Section 90.6 – File & Use Program	Clarifies that the requirements of this section are not applicable to MMPs.
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 MMPs.
Section 100.2 – Required Content	Adds new requirements for MMPs to current MMG requirements of this section.
Section 100.2.1 – Required Documents for All Plans/Part D Sponsors	Clarifies that the requirements of this section are not applicable to MMPs.
Section 100.2.2 – Required Documents for Part D Sponsors	Clarifies that the requirements of this section are not applicable to MMPs.
Section 100.3 – Electronic Enrollment	Clarifies that the requirements of this section are not applicable to MMPs.
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 MMPs with respect to independent agents and brokers.
Section 150 – Use of Medicare Mark for Part D Sponsors	Clarifies the requirements of this section for MMPs.
Section 160.1 – When Prior Authorization from a Beneficiary is Not Required	Clarifies that MMPs may not send marketing materials to current members about other

	Medicare products they offer, and they may not send information requesting members' prior authorization to receive 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 MMPs

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

We refer MMPs to the following available model materials. We note that materials created by MMPs 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 MMPs must add required disclaimers in section 50 of this guidance, as appropriate. Adding required MMP disclaimers to Part D models will not render the documents non-model when submitted for review or accepted as File & Use materials.

- MMP-specific model materials, including an Annual Notice of Change (ANOC), Evidence of Coverage (Member Handbook), comprehensive integrated formulary, combined provider/pharmacy directory, ID card, and welcome letter for passively enrolled individuals tailored to MMPs in New York will be available at: <http://cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/FinancialAlignmentInitiative/InformationandGuidanceforPlans.html>.

MMP-specific model materials tailored to MMPs in New York will be added to the website above on a flow basis as they are finalized and will also be disseminated via the Health Plan Management System (HPMS).

- Required Part D models, including the Part D Explanation of Benefits, Excluded Provider Letter, Prescription Transfer Letter, and Transition Letter: <http://cms.gov/Medicare/Prescription-Drug-Coverage/PrescriptionDrugCovContra/Part-D-Model-Marketing-Materials.html>.
- 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>.

We expect to issue additional operational guidance – including final marketing codes for MMPs to use in submitting marketing materials in HPMS – as well as New York-specific MMP marketing model templates after the release of this policy guidance. In addition, MMPs will be required to submit an annual marketing plan to CMS and the State for review and approval. More detail about this requirement will be provided in the three-way contract, as well as in section 10 of this document.

Following are the New York MMP-specific modifications to the Medicare Marketing Guidelines for CY 2014.

## Section 10 – Introduction

The prohibition on marketing for an upcoming year prior to October 1 will only apply when the upcoming plan year begins on January 1. Given the mid-year demonstration start in New York, for CY 2014, MMPs may begin marketing activity no sooner than: (1) June 1, 2014; or (2) once the MMP 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 MMP is able to receive payment and enrollments; whichever is later. Marketing activity for CY 2015 may begin no earlier than October 1, 2014 and must be consistent with the CY 2015 Medicare Marketing Guidelines (which will be issued in final in 2014), with the exceptions articulated in New York-specific marketing guidance as appropriate.

MMPs must submit a plan of MMP Marketing activities to CMS and NYSDOH that sets forth the terms and conditions and proposed activities of the MMP 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; and
- A listing of the kinds of community service events the MMP anticipates sponsoring and/or participating in during which it will provide information and/or distribute MMP marketing materials.

An approved marketing plan must be on file with the CMS and NYSDOH for its contracted service area prior to the MMP engaging in the MMP specific marketing activities. 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 MMP's monitoring activities to ensure compliance with this section; and 5) identification of the primary marketing locations at which marketing will be conducted. The MMP must describe how it is able to meet the informational needs related to marketing for the physical and cultural diversity of its potential membership. This may include, but not be limited to, a description of the MMP'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 (TTY) services. The MMP 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 MMP; the selection and distribution of pre-enrollment gifts and incentives to

prospective enrollees; and a description of the training, compensation and supervision of its MMP dedicated Marketing representatives. We note that MMPs will still be required to submit marketing events in HPMS as provided in section 70.9.1 of the MMG.

### **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 MMP services areas for CY 2014.<sup>2</sup> For CY 2014, New York’s standard requires translation of required marketing materials (which, for New York MMPs will be the Summary of Benefits, ANOC/EOC (Member Handbook), formulary (List of Covered Drugs), provider/pharmacy directory (Provider and Pharmacy Network Directory), and the Part D transition letter) into the six required languages in all service areas.<sup>3</sup> Therefore, the New York standard for translation will apply to New York MMPs for CY 2014.

#### **Section 30.5.1 – Multi-Language Insert**

We clarify that MMPs will need to include a Multi-Language Insert with their demonstration-specific Summary of Benefits (SB) and Annual Notice of Change (ANOC)/Evidence of Coverage (Member 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 MMPs must use the Multi-Language Insert in Appendix 4 of the Medicare Marketing Guidelines. We clarify that alternate format materials must be made available upon request.

#### **Section 30.6 – Required Materials with an Enrollment Form**

Because MMPs 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 beneficiary is

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<sup>2</sup> Guidance on the CY 2014 translation requirements for all plans, including MMPs, was issued via HPMS and entitled, “Contract Year 2014 Translated Marketing Materials Requirements and Methodology” on September 18, 2013 and is located at <http://cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/FinancialAlignmentInitiative/Downloads/FinalCY2014MMPTTranslationHPMSMemo.pdf>. For additional information, refer to the April 10, 2013 HPMS memorandum, “Translation Requirements for CY 2013 Medicare-Medicaid Plans (MMPs)” at <http://cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/Downloads/CY2013MMPTTranslationHPMSMemoFinal041013.pdf>.

<sup>3</sup> CMS will make available Spanish translations of the New York MMP summary of benefits, formulary, provider/pharmacy directory, and ANOC/EOC (Member Handbook). CMS makes available a Spanish translation of the Part D transition letter to all Medicare health plans at <http://www.cms.gov/Medicare/Prescription-Drug-Coverage/PrescriptionDrugCovContra/Part-D-Model-Marketing-Materials.html>.

provided with pre-enrollment information. We further clarify that the responsibility for sending enrollment and disenrollment notices to enrollees will be delegated to New York's enrollment broker for all demonstration service areas.

### **Section 30.7 – Required Materials for New and Renewing Members at Time of Enrollment and Thereafter**

This section is replaced with the following revised guidance:

#### **Section 30.7 – Required Materials for New and Renewing Members at Time of Enrollment and Thereafter**

**42 CFR 422.111, 423.128, 422.2264, 423.2264**

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

- Welcome Letter
- Summary of Benefits
- Annual Notice of Change/Evidence of Coverage (EOC) (Member Handbook), or simply an Evidence of Coverage (Member Handbook), as applicable and described in the replacement guidance below for section 60.7 of the Medicare Marketing Guidelines.
- 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 MMP.
- A combined provider and pharmacy directory (Provider and Pharmacy Network Directory) that includes all providers of Medicare, Medicaid, and additional benefits, or information about how to access or receive the pharmacy/provider directory (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 MMP 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 (Member 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 (Member 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 MMP must send an SB to current enrollees post-enrollment.

MMPs must provide enrollees who self-select into the demonstration the following materials no later than ten (10) calendar days from receipt of CMS 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 enrollees who self-select includes individuals who are eligible for passive enrollment but select a different MMP or initiate an earlier enrollment date than their passive enrollment effective date. For late month enrollment transactions (those for which CMS confirmation of enrollment is received less than ten (10) calendar days before the end of the month prior to the effective date), MMPs must send these materials no later than ten (10) calendar days from receipt of CMS confirmation of enrollment. MMPs should refer to the date of the Daily Transaction Reply Report (DTRR) that has the notification to identify the start of the ten (10) calendar day timeframe.

- A comprehensive integrated formulary
- A combined pharmacy/provider directory, or information about how to access or receive the pharmacy/provider directory, consistent with section 60.4 of this guidance.
- A single ID card

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

- A welcome letter consistent with a model developed jointly by CMS and the State
- A comprehensive integrated formulary
- A combined pharmacy/provider directory, or information about how to access or receive the 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 MMP or enroll earlier than their passive enrollment effective date must receive the materials listed above on the same timeline as enrollees who self-select into the demonstration. Additional materials may not be included in this mailing, unless the MMP chooses to mail the EOC (Member Handbook) and ID card early along with the materials in this mailing.

In addition, MMPs must provide enrollees who are passively enrolled 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 beneficiary by January 31 for a February 1 effective enrollment date).

For both enrollees who are passively enrolled and enrollees who self-select into the demonstration, the EOC (Member Handbook) must be provided at the time of enrollment. The Annual Notice of Change (ANOC) and EOC (Member Handbook) must also be provided annually thereafter consistent with the replacement guidance below for section 60.7 of the Medicare Marketing Guidelines.

The following tables summarize the requirements of this section.

**Table 2: Required Materials for New Members**

Enrollment Mechanism	Required Materials for New Members	Timing of beneficiary receipt
Passive Enrollment	<ul style="list-style-type: none"> <li>• Welcome letter</li> <li>• Formulary</li> <li>• Pharmacy/provider directory (or information about how to access or receive the directory)</li> <li>• SB</li> </ul>	30 calendar days prior to the effective date of enrollment
	<ul style="list-style-type: none"> <li>• ID card</li> <li>• EOC (Member Handbook)</li> </ul>	No later than the day prior to the effective date of enrollment
Self-selected enrollment (with enrollment confirmation received more than 10 calendar days before the end of the month)	<ul style="list-style-type: none"> <li>• Formulary</li> <li>• Pharmacy/provider directory (or information about how to access or</li> </ul>	No later than the last day of the month prior to the effective date.

	receive the directory) <ul style="list-style-type: none"> <li>• ID card</li> <li>• EOC (Member Handbook)</li> </ul>	
Self-selected enrollment (with enrollment confirmation received less than 10 calendar days before the end of the month)	<ul style="list-style-type: none"> <li>• Formulary</li> <li>• Pharmacy/provider directory (or information about how to access or receive the directory)</li> <li>• ID card</li> <li>• EOC (Member Handbook)</li> </ul>	No later than 10 calendar days from receipt of the CMS confirmation of enrollment

**Table 3: Required Materials for Renewing Members**

Required Materials for Renewing Members	Timing of beneficiary receipt
<ul style="list-style-type: none"> <li>• ANOC/EOC (Member Handbook)</li> <li>• Formulary</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>• ANOC</li> <li>• SB</li> <li>• Formulary</li> </ul>	September 30
If only the ANOC, SB, and formulary are sent by September 30: <ul style="list-style-type: none"> <li>• EOC (Member Handbook)</li> </ul>	December 31
<ul style="list-style-type: none"> <li>• ID card</li> </ul>	As needed
<ul style="list-style-type: none"> <li>• Pharmacy/provider directory (or information about how to access or receive the directory)</li> </ul>	At least every three years, with change pages for major network changes as needed. 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 MMPs will be too new to measure under the CMS plan (star) rating system, this section does not apply to MMPs.

### **Section 30.10.1 – Referencing Star Ratings in Marketing Materials**

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

### **Section 30.10.2 – Plans with an Overall 5-Star Rating**

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

## **Section 40.6 – Hours of Operation Requirements for Marketing Materials**

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

## **Section 40.8 – Marketing of Multiple Lines of Business**

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

### **Section 40.8.1 – Multiple Lines of Business – General Information**

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

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

In addition to the guidance in this section, CMS and the State 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

MMGs 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, MMPs will be required to include the plan type in each plan’s name using standard terminology consistent with the guidance provided in this section. CMS has created the standardized plan type label “Medicare-Medicaid Plan” to refer generically to all plans participating in a Capitated Financial Alignment Demonstration. MMPs must use the “Medicare-Medicaid Plan” terminology consistent with the requirements of section 40.13 of the MMGs.

CMS is unable to create State-specific plan type labels in HPMS for each State’s demonstration plans; therefore all MMPs will be 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](http://www.medicare.gov). MMPs may also use any State-specific plan type terminology in their marketing materials, provided they comply with the guidance regarding use of the CMS standardized plan type in section 40.10, under which the MMP must use the “(Medicare-Medicaid Plan)” standardized plan type label following the plan name at least once on the front page or beginning of each marketing piece. The state also expects to each plan to use the term “Fully-Integrated Duals Advantage” (FIDA) plan to refer to MMPs in New York. The state also expects MMPs to use the term FIDA in the in their plan name. Thus, we clarify that MMPs must use the CMS standardized plan type – <plan name> (Medicare-Medicaid Plan) – once in their materials but must use the term “FIDA plan” elsewhere in the document and must use the term “FIDA” in the name of their plan.

In addition, we clarify that MMPs in New York that offer Medicare Advantage products, including SNPs, in the same service area as their MMPs, may not use the same plan marketing name for both those products, so as to prevent beneficiary confusion. Thus, for example, an organization offering both a SNP and an MMP 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 MMPs product – e.g., Acme Duals Care (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 MMP contracts with both the Federal and the State government. The following statement must be used:

"<Plan's legal or marketing name> is a health plan that contracts with both Medicare and New York State Department of Health to provide benefits of both programs to enrollees."

NOTE: Banner and banner-like ads, envelopes, outdoor advertising, radio, 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: "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 Member Handbook."

"Limitations [, copays,] and restrictions may apply. For more information, call <plan name> <Member Services> or read the <plan name> Member Handbook."

"Benefits, List of Covered Drugs, [and] pharmacy and provider networks [and/or copayments] 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 MMPs, as MMPs are not permitted to assess plan premiums, and States will pay Medicare Part B premiums on behalf of Medicare-Medicaid enrollees in MMPs.

### **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 as required in section 30.7.

“You can get this information for free in other languages. Call <toll-free number>. The call is free.

The alternate language disclaimer must be provided in both English and all non-English languages that meet the more stringent of either the Medicare or the Medicaid translation standard. 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 – 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 MMPs. MMPs may only include the following information related to their National Committee for Quality Assurance (NCQA) model of care approval:

“<Plan name> has a Model of Care approved by the National Committee for Quality Assurance (NCQA) and New York State Department of Health until [insert 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 MMPs, as the Online Enrollment Center on the Medicare Plan Finder website will not be available to MMPs.

## **Section 50.13 – Disclaimer When Using Third Party Materials**

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

## **Section 50.14 – Disclaimer When Referencing Star Ratings Information**

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

## **Section 60.1 – Summary of Benefits**

This section is replaced with the following revised guidance:

### **Section 60.1 – Summary of Benefits**

42 CFR 422.111(b)(2), 422.111(f), 423.128(b)(2)

MMPs must use the Summary of Benefits (SB) model document provided to New York MMPs 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 member's primary language is known to be one of those languages.

## **Section 60.2 – ID Card Requirements**

MMPs are required to meet the ID card content requirements in sections 60.2, 60.2.1, and 60.2.2. We clarify, however, that MMPs must issue a single ID card meeting these requirements for all services offered under the plan. Separate pharmacy and health benefits ID cards will not be permitted. MMPs must use the model ID card document provided to New York MMPs 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 MMPs with the following modifications:

- MMPs are required to make available a single, combined pharmacy/provider directory. Separate pharmacy and provider directories will not be permitted;
- At the time of enrollment and then as required thereafter, MMPs have the option to either mail a pharmacy/provider directory or to mail a document that provides enrollees with information about how to access the directory on the MMP website, as well as how to call the plan's customer service call center to request assistance with locating providers and request that a pharmacy/provider directory be mailed to them;

- The combined pharmacy/provider directory must include all network providers and pharmacies, regardless of whether they provide Medicare, Medicaid, or additional benefits;
- For MMPs 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 enrollee 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
- MMPs must use the model pharmacy/provider directory document provided to New York MMPs 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 MMPs with the following modifications:

- MMPs must provide a comprehensive integrated formulary that includes Medicare and Medicaid outpatient prescription drugs and pharmacy products provided under the plan;
- MMPs will only be permitted to provide comprehensive formularies, not abridged formularies;
- MMPs must use the model formulary document provided to New York MMPs 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 Medicare Marketing Guidelines, this notice must be provided to affected enrollees at least 60 calendar days prior to the change.

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

This section is replaced with the following revised guidance:

### **Section 60.7 – Annual Notice of Change (ANOC) and Evidence of Coverage (EOC) (Member Handbook)**

42 CFR 422.111(a)(3), 422.111(d)(2), 423.128(a)(3)

MMPs 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 MMP may send the ANOC and EOC (Member Handbook) as a combined document or separately, as provided below.

MMPs must send the ANOC for member receipt by September 30 each year. The EOC (Member Handbook) may be sent as a standalone document as follows:

- MMPs must send new enrollees (whether they self-select into the Demonstration or are passively enrolled) an EOC (Member Handbook) for member receipt by the end of the month preceding the month the enrollment will take effect (e.g., the document must be received by a beneficiary by June 30 for a July 1 effective enrollment date). For late month enrollment transactions (those for which CMS confirmation of enrollment is received less than ten (10) calendar days before the end of the month prior to the effective date), MMPs must send these materials no later than ten (10) calendar days from receipt of CMS confirmation of enrollment.
- After the time of initial enrollment, MMPs must annually send an EOC (Member Handbook) for member receipt by December 31. MMPs choosing this option (rather than a combined ANOC/EOC (Member Handbook) by September 30) must also send an SB with the ANOC..

New enrollees with an effective date of October 1, November 1, or December 1 should receive both an EOC (Member Handbook) for the current contract year, as well as a combined ANOC/EOC (Member Handbook) document for the upcoming contract year. We clarify that, for these members, the combined ANOC/EOC (Member Handbook) for the upcoming year, as well as the formulary, and pharmacy/provider directory (or information about how to access the directory online or obtain a hard copy) for the upcoming year, must be received by one month after the effective date of enrollment, but not later than December 15<sup>th</sup>.

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 MMPs are mailing their annual ANOC/EOC (Member Handbook) in a timely manner, plan sponsors must indicate the actual mail date in HPMS within fifteen (15) calendar days of mailing. MMPs 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.

MMPs must use the ANOC/EOC (Member Handbook) errata model to notify enrollees of any errors in their original mailings.

### **Section 60.8 – Mid-Year Changes Requiring Enrollee Notification**

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

### **Section 70.1 – Promotional Activities**

Under the New York demonstration, MMPs may not offer financial or other incentives of any kind to induce enrollees or potential enrollees to enroll with the MMP or to refer a friend, neighbor, or other person to enroll with the plan. We clarify, however, that promotional activities, rewards, incentives, and nominal gifts for current members provided at targeted educational events are permitted consistent with sections 70.1, 70.1.1 and 70.2 of the MMG.

#### **Section 70.1.1 – Nominal Gifts**

Under the New York demonstration, MMPs may not offer financial or other incentives of any kind to induce enrollees or potential enrollees to enroll with the MMP or to refer a friend, neighbor, or other person to enroll with the plan. We clarify, however, that promotional activities, rewards, incentives, and nominal gifts for current members provided at targeted educational events are permitted consistent with sections 70.1, 70.1.1, and 70.2 of the MMG.

### **Section 70.5 – Marketing Through Unsolicited Contacts**

In addition to the requirements of section 70.6, MMPs conducting permitted unsolicited marketing activities such as mail and other print media are required to include the following disclaimer on all materials used for that purpose: “For information on <Plan name> and other options for your health care, call the New York Enrollment Broker at 1-800----- (TTY: 1-800-----), or visit <http://-----/>.”

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 MMPs may not call current members to promote other Medicare plan types. Information about other Medicare plan types can only be provided at the proactive request of a current member.

## **Section 70.7 – Outbound Enrollment and Verification Requirements**

Since all enrollments into MMPs will be submitted by the State enrollment broker, the requirements of this section do not apply.

## **Section 70.9 - Marketing/Sales Events**

In addition to the requirements outlined in this section, if enrollment applications are distributed during the course of a marketing/sales event, any and all associated cover pages must remain attached to the application. If plan customer service staff assist potential enrollees in filling out enrollment applications, the staff must direct the potential enrollee to first read any and all associated cover pages attached to the application. The staff must also read the cover page(s) aloud to the enrollee if asked. Plan customer service staff that assist in completing an application must document their name on the application in accordance with the application's instructions.

The MMP must convene all educational and marketing events at sites within the plan's service area that are physically accessible to all enrollees or potential enrollees, including persons with disabilities and persons using public transportation.

### **Section 70.9.2 – Personal/Individual Marketing Appointments**

Since New York MMPs will not be allowed to market directly to individual potential enrollees, the requirements of this section do not apply.

## **Section 70.11 – Marketing in the Health Care Setting**

The flexibility provided in the last paragraph of this section for long-term care facility staff to provide residents meeting the eligibility criteria for an Institutional Special Needs Plan (I-SNPs) with an explanatory brochure for each I-SNP with which the facility contracts is also applicable to MMPs. This flexibility is also applicable to staff in day care settings as well as chronic and psychiatric hospitals for MMP-eligible individuals, post-stabilization.

### **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)

MMPs must operate a toll-free call center for both current and prospective enrollees 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 enrollees must be able to speak with a live customer service representative. For CY 2014, MMPs may use alternative technologies on Saturdays, Sundays, and Federal holidays in lieu of having live customer service representatives. For example, an MMP may use an interactive voice response system or similar technologies to provide the required information listed below, and/or allow a beneficiary 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 § 80.1.2 – 80.4.
- Follow an explicitly defined process for handling customer complaints.
- Provide interpreter service to all non-English speaking, limited English proficient and hearing impaired beneficiaries.
- Inform callers that interpreter services are “free.”
- Provide TTY service to all hearing impaired beneficiaries.
- 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 interactive voice response (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.

## **Section 80.2 – Requirements for Informational Scripts**

We clarify that informational calls to plan call centers that become sales/enrollment calls at the proactive request of the beneficiary must be transferred to New York’s enrollment broker. Prior to transferring an information call to New York’s enrollment broker, the beneficiary must

be informed he/she is being transferred. We also clarify that MMPs 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 member.

## **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 MMP marketing material review.

### **Section 90.2.3 –Submission of Multiplan Materials**

This section does not apply to MMPs.

### **Section 90.3 – Material Status**

We clarify that, for purposes of MMP 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. 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 90.5 – Time Frames for Marketing Review**

We clarify that, for purposes of MMP 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. 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 – File & Use Program**

This section does not apply to MMPs.

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

This section does not apply to MMPs.

### **Section 100.2 – Required Content**

In addition to the requirements outlined in this section, MMPs must also include on their websites a direct link to the State enrollment broker on their website. MMPs must also include information on the potential for contract termination, and information that materials are published in alternate formats (e.g., large print, Braille, audio CD).

MMPs must also include language on all direct 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. MMPs must include the toll-free number and the website for the Participant Ombudsman. Specifically, the MMP must state: “The State of New York has created a Participant Ombudsman Program to provide Participants free, confidential assistance in any services offered by <Plan Name>. The Participant Ombudsman may be reached toll-free at ----- or online at www.-----.”

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

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

### **Section 100.2.2 – Required Documents for Part D Sponsors**

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

### **Section 100.3 – Electronic Enrollment**

This section is not applicable to MMPs. The Online Enrollment Center will not be enabled for MMPs, and MMPs will not be permitted to directly enroll individuals through a secure Internet website. All enrollments will be processed via the State 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 MMPs’ 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 does not apply to MMPs since the use of independent agents/brokers will not be permitted. All MMP enrollments will be processed by the State enrollment broker.

### **Section 150 – Use of Medicare Mark for Part D Sponsors**

We clarify that MMPs will be 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 section 150 and all its subsections applies.

### **Section 160.1 – When Prior Authorization from a Beneficiary is Not Required**

We clarify that MMPs may not send marketing materials to current members about other Medicare products they offer, and they may not send information requesting members' prior authorization to receive materials about other Medicare products they offer. Such materials may only be sent when a current enrollees 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 NY Medicaid has reviewed or endorsed this information.”