



**MEDICARE-MEDICAID COORDINATION OFFICE**

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**DATE:** August 3, 2020

**TO:** Medicare-Medicaid Plans and Minnesota Senior Health Options Plans

**FROM:** Lindsay P. Barnette  
Director, Models, Demonstrations, and Analysis Group

**SUBJECT:** State-specific Marketing Guidance and Model Materials for Medicare-Medicaid Plans and Minnesota Senior Health Options Plans for Contract Year 2021

The purpose of this memorandum is to provide information to Medicare-Medicaid Plans (MMPs) and Minnesota Senior Health Options (MSHO) Plans about state-specific marketing guidance and model materials for Contract Year (CY) 2021.

During CY 2021, CMS intends for Medicare Advantage Organizations, Prescription Drugs Plans, and Section 1876 Cost Plans to continue to rely on the CY 2019 Medicare Communications and Marketing Guidelines and the CMS memorandum titled “Medicare Communications and Marketing Guidelines,” dated August 6, 2019, <https://www.cms.gov/Medicare/Health-Plans/ManagedCareMarketing/FinalPartCMarketingGuidelines.html>.

Also, in the recent update and review cycle for CY 2021 MMP and MSHO Plan model materials, the Medicare-Medicaid Coordination Office (MMCO) consulted each state and learned that none had any essential updates for their state-specific marketing guidance for CY 2021.

In addition, a June 19, 2020 final rule issued by the Department of Health and Human Services’ Office for Civil Rights (OCR)<sup>1</sup> revised or replaced requirements for health plans that were promulgated in OCR’s May 18, 2016 final rule<sup>2</sup> implementing Section 1557 of the Affordable Care Act (45 CFR 92).

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<sup>1</sup> Nondiscrimination in Health and Health Education Programs or Activities, Delegation of Authority, 85 FR 37160-37248. Retrieved from <https://www.federalregister.gov/documents/2020/06/19/2020-11758/nondiscrimination-in-health-and-health-education-programs-or-activities-delegation-of-authority>.

<sup>2</sup> Nondiscrimination in Health Programs and Activities, 81 FR 31375-31473. Retrieved from <https://www.federalregister.gov/documents/2016/05/18/2016-11458/nondiscrimination-in-health-programs-and-activities>.

As a result of this information and in support of continued burden reduction for states, MMPs, and MSHO Plans during the public health emergency, MMCO and states will forgo jointly updating and issuing state-specific marketing guidance for CY 2021. MMPs and MSHO Plans will continue to use their CY 2020 state-specific marketing guidance during CY 2021 with the following clarifications:

- The “Compliance with Section 1557 of the Affordable Care Act of 2010” section of the Introduction is not applicable.
- Section 1557 language about notices, taglines, and requirements in the last paragraph of Section 30.3, “Non-English Speaking Population,” is not applicable. (**Note:** This only applies to MMPs since Minnesota does not include this section in its marketing guidance for MSHO Plans.)
- The “Availability of Non-English Translations” disclaimer in Appendix 2 continues to be applicable.

We also clarify the following for all MMP and MSHO Plan CY 2021 state-specific model materials:

- The following instruction is not applicable: “Plans are subject to the notice requirements under Section 1557 of the Affordable Care Act. For more information, refer to <https://www.hhs.gov/civil-rights/for-individuals/section-1557>.”
- A nondiscrimination notice under Section 1557 of the Affordable Care Act is not applicable as an example of other legal notices plans may include in Member Handbook Chapter 11. (**Note:** This applies to all MMPs and MSHO Plans except for MMPs in Ohio.)
- Instructions and information related to making language assistance services and alternate format materials available for free continue to be applicable.

This memorandum will be posted to MMCO’s Information and Guidance for Plans webpage at <https://www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/FinancialAlignmentInitiative/MMPInformationandGuidance/MMPMarketingInformationandResources>.

For any questions about the contents of this memorandum, please contact the Medicare-Medicaid Coordination Office at [MMCOCapsModel@cms.hhs.gov](mailto:MMCOCapsModel@cms.hhs.gov).