



CMS 2011 MEDICARE ADVANTAGE AND PRESCRIPTION DRUG PLAN
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TRANSCRIPT

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Good morning. Thank you for being here bright and early. I wanted to take the opportunity, before I start on the slides, just to introduce my division, which is relatively new. It was created last fall, the Division of Surveillance Compliance and Marketing. And we bring together, as you see, marketing and the Part C compliance and surveillance efforts.

These functions previously were in different areas in the Medicare Contract Administration Group. And it was decided that – I mean marketing has had some challenges in finding a home. In fact, since I've been in the Medicare Advantage group area, I think marketing has been in three different areas, and this the fourth area. So in five years or so, it's moved around quite a bit. I think this is a good home for it. I think my team thinks it's a good home for it. We really – it allows us to bring together some very comparable strengths and some things that needed some coordination that might not have been getting the attention it needed. So we're very happy to be able to do that.

Today I'm talking about marketing as we're looking towards the 2012 AEP. And actually, I'm supposed to be doing my slides, so now I'm – there we go. So you hopefully had seen we issued for public comment the proposed updates to the 2012 Medicare Marketing Guidelines. I'm also going to speak about our file and use retrospective reviews; third party marketing and marketing materials, which has been an issue that's been coming up quite a bit lately; and also the agent/broker training and testing. We're also going to talk a little bit about the regs that – the marketing provisions in the regs that Vanessa discussed a little bit yesterday.

So the proposed marketing updates – I'm a little short to see this over here, so I'm going to be looking over here a little bit. So, yes, we did some revisions to the guidelines, mainly to clarify policies that were already in existence that may have lacked sufficient clarity. We incorporated policy changes, and mostly were just trying to make these more usable, more user-friendly. We did a post for public comments and did get quite a bit; we got 857 comments from 83 different organizations. And I'll have you know when we do this process, it's not an easy process, we're on a very tight timeframe, when we do the proposed changes we collect them from across our colleagues in the comparable – in the different groups that touch MA in Part D, then they get posted, and when the comments come in they go back to the subject matter experts for analysis and changes, should those changes be needed. So we are in a very – the process, these get looked at quite a bit over and over by different people, so that everybody is touching it to try and make it the best product that we can.

The changes that were made to the guidelines included things that were based on the regulation that we discussed that was just posted, including extending the annual training requirements to all agents and brokers. The phrasing previously had not been clear that that was applicable. It extended the call center customer service requirements and the internet website requirements that were applicable to Part D and made it clear that those are extended to now to MA organizations. It added provisions that – where there's an agent that is unqualified, maybe unlicensed, or perhaps didn't pass the tests appropriately, sponsors must notify the beneficiary of that, that agent was not qualified to conduct that. And

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if the “bene” asks, then they can switch. They can ask to switch if they want to, but they just at least have to be notified of that fact.

Other proposed changes – let me catch up with myself here – were relating to the interpreter services available, having for the non-English-speaking, the limited English proficient beneficiaries, and that, you should be aware, is in place, that plan sponsors must do this regardless of those percentages, the translation percentages that also were discussed yesterday. So when you talk about the translating the marketing materials, that is just relating to the percentage of people of limited English proficiency in the area that you’re operating. The availability of the interpreter services happens regardless of that. So that’s the five or more percent, I’m sorry.

The ANOC/EOCs were revised, and so comparable pieces of the guidelines were changed. This year we developed a SNIP-specific ANOC/EOC. Again, as part of our efforts to be transparent the ANOC/EOCs were posted for comment, as the guidelines were. We did get in quite a few. I want to say there are 2,000 comments or so on the ANOC/EOCs. And my staff person, Jenny Kehm, who works out of Denver, she has been doing a great job working, again, with the subject matter experts in our colleague groups to make those documents as user-friendly and appropriate as possible.

The customer call center requirements have been revised to reflect the new AEP. We’ve also made some changes to template materials and how they’re identified. We now classify template materials as standard or static to clarify what needs to be submitted for review and approval. So when we say “static,” these are probably things like letters that may go to a large number of enrollees, where the only thing changing, really, is the date, the name of the person, an address, these are things that we’re not going to ask you to resubmit as populated; whereas the standard template is more substantive, the pieces that you’re going to be adding to the document are more substantive, and those are materials where you’re going to want to see again. So you’ll see that in the guidelines.

We’ve clarified the non-renewing plans that they have to contact – they have to send notices, non-renewal notices to their beneficiaries no later than October 2nd, and, again, this is from the proposed changes. Okay. And then the website information and the contracting disclaimer, so you’ll see those, but I won’t walk right through them. Let’s go to the next slide.

Okay. Agent/broker testing and training, and I know we’ve had quite a few inquiries about this area, and yesterday, I know Vanessa did mention this also. The training and testing requirements, we’re looking towards the 2013 AEP for these to be effective. So we’re hoping to have this process up and approved in time so that the organizations – the approvals will be done in time for training and testing for, not this fall, next fall. We expect to be coming out with some additional guidance on that. And I should go right to the slide instead of staying on the coversheet.

So, again, we’re going to have more guidance on the agent/broker training and testing. We’ll move to ensure that it’s consistent. This is going to ensure that there’s consistency across trainings so the agents nationally are getting the same information, same types of information. And, again, we will be issuing an announcement to give more details on how this process is going to be handled.

File and use: We’ve been taking a closer look, I mean, for the past few years we do monitor file and use going back through materials as a collaborative effort with the regional offices to – it’s for a number of reasons. I mean, one, you know, we’re looking to see where are there problems that we see in terms of maybe the guidelines aren’t as clear as they could be, and so that’s coming out when we look retrospectively at the file and use documents. Perhaps there are things that are being abused that we feel like we need to kind of look more closely at. You know, maybe there’s training opportunities, both internally for CMS and our reviewers, and possibly for the industry. So really looking at things retrospectively gives us the opportunity to identify those opportunities for improvement.

Of late, we’ve done three reviews targeted at different types of materials from the 2010 year. We did some reviews for 2009. And, again, it helps us identify just, you know, for us, the best use of our resources and the best way to enhance the process, both in terms of ensuring the quality of the marketing materials and really, you know, facilitating the process for our partners, our sponsor partners.

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So what did we find when we did the reviews? You know, we did find a lot of things that were preventable, submission errors, so documents that are being submitted under the wrong codes, you know, things that are missing, pieces – required pieces that are missing like the contracting statement or other pieces of missing language. So we do anticipate trying to improve some of this. We're trying to simplify some of the codes for submission to try and make that a little bit of an easier process. Again, we anticipate kind of taking that on as a training issue. And we hope that the process itself will improve. So we're looking ahead.

What we'd like to do with file and use is not just – is kind of strengthen it to use, not just as a way of improving our process but to maybe help us on compliance efforts. So, you know, I don't expect that this is everybody, but, you know, for those organizations that are not really doing the homework and the legwork that they need to, we want to be able to, you know, make sure that the training is available for our partners, but also maybe move towards compliance where we have organizations that are repeated – have repeated issues in the same areas.

Our periodic reviews, we're going to work again to try and do both a broad-based approach, but also maybe to do plan focused. And we will be talking to you about this. And, you know, I think, as we've done in surveillance where we've done sort of a risk-based approach in doing our secret shopping, I think in terms of file and use we are hoping to go in that direction.

Okay. Third party materials: this is for – the phrase is meant to reference organizations that may do marketing efforts for multiple plans, they may operate a website that offers, you know, a handful of MA or PD products, and they're using marketing materials that haven't – sometimes, you know, they're using things that are on behalf of the sponsors. So up until now, because our module, the HPMS marketing module, really accommodates the relationship between CMS and the sponsor, it doesn't really think about there are other entities that might be submitting, so that creates some disconnects in our system where perhaps one or another organization may submit the same model or template or document that's pretty much the same, and maybe one regional office is fine, another regional office to another plan that's using the same contractor may say, "Oh, no, we have a problem with this part, that part."

So we've got these inconsistencies where, you know, the third party will come to us or one of the organizations will say, "Well, you know, you approved it for this guy, why aren't you approving it for us?" So that's become – I mean, we don't like to have to set our regional offices against each other. We don't want the difficulties that the organizations are addressing, but at this point our module has not really allowed us to address that.

So we are working with our HPMS staff. They've been great in helping us. We're going to be issuing a – we're doing a release, which effectively means the change to the system in the late summer, I believe, that's going to accommodate the submission of third party materials in a way that we can identify and track them, so to the extent that maybe there's a PBM that multiple organizations work with. We'll be able to identify the initial, the kind of template material and track it to the organizations that are relying on that material. It will get one review as the template, and we'll be able to sort of demonstrate and document that to all the regional reviewers so they'll know it's been approved, and then, you know, we'll be able to see the specific – the populated documents that are going to be submitted, and be able to tie the pieces together.

So, again, it will avoid the disparate findings, hopefully – I'm sorry, it's enhancement of schedule for September; I thought it was August. But we're also working, because we realized that's some time away, in the interim, we're working on kind of a workaround, if that makes sense. We're working on a process to use in the meantime that will effectively do the same thing and allow for sort of the regional offices to have – to communicate and, you know, we're do our defining so there will be a single point of entry, a single regional office will be responsible for reviewing the initial piece, and we'll be able to tie the pieces together. And, again, that will all, then, get rolled into HPMS once the release comes out.

Oh my goodness, that can't be the end, can it? Okay. I'm willing to take questions. I don't have much of my staff here who have the depth of knowledge on marketing, but I will do my best to answer, and I'm happy to take back questions that I can't answer, or my contact information is on the last slide that you have. So, oh, I'm supposed to leave Jill's – sorry, Jill, I ran right through that.

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Jill: That's okay.

Helaine: And I'm going to sit and Jill's going to moderate this. So thank you and I look forward to answering your questions.

Jill: All right. We know how this works. If you have a question for Helaine, all you have to do is raise your hand and one of our folks with the blue flashlights will pass you a microphone, and all we ask is that you identify yourself, who you are, and where you're from. And we're going to start with a question right up front.

Audience Question: Yes, hi. Thank you. My question is actually on renewal commissions for agents. Okay. Can you clarify guidance on the plan's responsibilities when downstream with – if we pay renewal commissions and downstream agents, if the FMO has terminated with the health plan, should the health plan pay the downstream agents directly if the FMO terminated?

Helaine: I don't –

Jill: It will be on, go ahead.

Helaine: Okay. If the agent has been terminated, you don't have to pay. And I understand what you're saying. If the FMO terminates, and I think that's the same as the agent terminating, as you're terminating the agent's contract, so you no longer have a direct relationship with that agent. Is that correct?

[Audience Member's Name Withheld]: Yes, that's correct.

Helaine: I would think you would not have to pay if the FMO terminates.

[Audience Member's Name Withheld]: Okay. And what if the agent went to another FMO who is also contracted with the plan, do we pay the new FMO?

Helaine: Hmm, that's – oh, please. Thank you, Chevell, I'm glad you're here. Actually, some of my staff is here. I hadn't seen – Chevell Thomas is my lead person on agent/broker compensation. So please, Chevell, go right ahead.

Chevell: I didn't get to check in with you this morning.

Helaine: That's okay.

Chevell: The compensation goes with the beneficiary, so if a new agent is assigned to that beneficiary, then that agent would pick up the compensation. So in your second example, where you have two FMOs, the first one's terminated, you bring on the second one, and they're representing that beneficiary, then the compensation would continue with that new FMO. As far as contracting with the agent directly, if you have a mechanism for doing that, then you could do it that way, but if it's the termination and if no one picks it up, then it would just end.

[Audience Member's Name Withheld]: And what if the FMO filed for bankruptcy? I'm sorry. If the FMO filed bankruptcy, but the agents, you know, are not directly contracted with us, so we don't pay them directly. And sometimes there are specific circumstances that we probably have to take back and think about. I mean it gets a little complicated.

CMS Employee in Audience: Well, the underlying principle is whoever is assisting the beneficiary at the time is the one that should receive the compensation, but then it also depends on the contract between the plan and that person or entity.

CMS Employee in Audience: Right. So there's always lots of twists and turns in these relationships.

[Audience Member's Name Withheld]: Thank you so much.

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CMS Panelist: And feel free, if you have specifics, to send them to us, and we'll be happy to work with you.

Jill: How good are these CMS professionals? By day two, they sense you have a question, they place someone strategically near you, and they tag team answers. This is incredible. We've never done this before. Another question.

Audience Question: Good morning. [Audience Member's Name Withheld] with [Organization Name Withheld]. I have a question regarding the ANOC/EOC mailing timeline. Members have to receive it by end of September –

Heleaine: Correct.

[Audience Member's Name Withheld]: However, we cannot start marketing until October 1st.

Helaine: That's correct.

[Audience Member's Name Withheld]: Will there be anything in chapter three regarding what plans can say to individuals that call after receipt of the materials in September? Can we share information about benefits when they specifically ask about them even before October 1st? So this is like incoming calls. They're not outbound calls or.

Helaine: You know, I think that's interesting. I'm not sure we really anticipated that if somebody received the document on September 30th they were going to pick up the phone. Although I can understand that it's – okay, maybe I'm – maybe that's not so unusual.

[Audience Member's Name Withheld]: Yeah. I mean I would guess – in our experience, any mailing that goes out generates calls.

Helaine: You know, I mean I think we would feel like you can respond to questions; that if people are calling you after that goes out, I don't think we would consider that – I think the expectation, when we talk about marketing is, you know, active outreach and conducting sessions and being out and actively marketing. I think responding to questions that come in would be fine if that is going – if that happens. We would just not want you to be proactively pushing on things. Does that help?

[Audience Member's Name Withheld]: Oh, extremely, yeah, very helpful.

Helaine: Okay.

[Audience Member's Name Withheld]: And then I just had one other question. In the call letter there wasn't guidance that allows plan sponsors to mail the LIS rider separately from the ANOC/EOC, and we're just curious if that will be addressed either in the final document?

Helaine: To the extent that it was in the proposed, it will be addressed in the final document. Camille, is there anything more we need to say?

Audience Question: I'm Tracy Baker from CMS.

Helaine: Oh, sure.

Tracy: Many of you are familiar with me. The LIS EOC has – I mean, the LIS rider has not changed, you still will receive the deeming information because we start deeming in July. And if you can write – send out the LIS – I mean, the LIS Rider with the EOC, that will be fine, but there hasn't been any change. You still have 30 days to send it out upon a notification, and that information is in Chapter 13. I'm not sure what section, but it hasn't changed.

Audience Question: So we will be able to send the LIS Rider separately from the ANOC/EOC mailing as long as it's received by end of September?

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Helaine: Well, okay, if the person is deemed for next year, you will have received that information prior to having to send your EOC/ANOC, because of that, you should send your Rider along with it. If you receive deeming notification after the EOC/ANOC has already gone out, then you have 30 days from the CMS notification to send out the LIS Rider.

[Audience Member's Name Withheld]: Okay.

Helaine: Does that answer your question?

[Audience Member's Name Withheld]: Well I guess having to send the LIS Rider with the ANOC adds much complexity and cost to the mailing because it's now at the beneficiary level versus the plan level, so it just – it's the flexibility that was allowed in the past, and we'd really like to see it continue. And I can talk to you more about it, you know, and explain the concerns. Thanks.

Helaine: All right. Thank you.

You know, the one of the really great things about marketing is, you know, it's marketing, it's ours, but it's really about the program, and so we have this constant back and forth and interchange with our colleagues in enrollment, in payment, in Part D, because, really, some of these things are owned by these other groups and we're just facilitating, we're working with them to talk about how to get the information out, what's the best way to communicate, what are the requirements around it. But it's really a very interactive process.

But as you can see, people are jumping in because really it's all of our products, it's all of our information. So, you know, we're happy to work with them and with you. And I was also informed, on that note, that we are working to clarify the guidance around communications on that September 30th, after the issuance of the ANOC/EOC, the mailing of the ANOC/EOC. So go ahead if there's more questions.

Jill: Over here.

Audience Question: Hello. Oh, okay. Sorry.

Jill: Go ahead.

Audience Question: [Audience Member's Name Withheld], [Organization Name Withheld]. Just kind of leading off from what the discussion is as you're trying to clarify the guidance around the ANOC, I think there's a number of plans in this room who do orientation sessions with their members to be sure, because the ANOC letter is quite long and very complicated and many of our seniors struggle with it. So we do have orientation or opportunities for them to ask us questions about what does this really mean. So will we be able to have those sessions during the September timelines so that we can clarify? I understand that, as we read the guidance, it doesn't look like we can; however it is, for the better good of having a member understand what it is their plan will be in 2012. It really has been helpful, and it's in the best interest of the members.

Helaine: Right. Well, to the extent that you've been doing this previously, I'm not sure we – and if that's appropriate, I think, you know, it would be able to continue if you're not, you know, marketing a change, if you're talking about current benefits. Though, if you're talking about next year, I think we'd probably see that as a marketing effort. So, again, we're working to clarify kind of what is going to be appropriate in that timeframe, and I would say stay tuned. In terms of the marketing guidelines we are going to be having -- when we issue the final version, we are going to be doing an industry training on that. So we'll try and bring some of these questions back and see if we can address them at that time. Additional questions?

Jill: We have one in the back.

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Audience Question: Hi. [Audience Member's Name Withheld], [Organization Name Withheld]. The ANOC is going to come out in September, and I'm wondering if CMS will reconsider a position you've taken previously, which is, when we get those inbound calls, and I agree with the previous speaker, we will get those calls, when we get them, can we at least be allowed to set appointments when people want to discuss those benefits if we can't do orientation, if they say, "My premium is changing, I really want to change, I want to look at other options." We're not looking to market in September, all we're looking to do is to make sure we have enough boots on the ground, sales people, that we're staffed appropriately and we can start actually planning for the AEP. So being able, in September, to set an appointment or to schedule somebody for a seminar that doesn't start until October seems reasonable, but CMS has always said no in the past.

Helaine: Thank you. I appreciate the comment. Again, we'll take that into consideration.

Jill: All right. We have a question over here.

Audience Question: Good morning. My name is [Audience Member's Name Withheld]. I'm from [Organization Name Withheld]. Can you clarify for me, are plans allowed to market a specific element in the CAP survey? For instance, in the marketing guidelines there is text that says if you want to market something you did particularly well, like customer service or whatever, I know the CAP survey is a star survey where you get rated on a combination of all those elements, but there's a specific goal for each element, or a specific result. And there seems to be confusion about whether we're allowed to use that or not in our marketing.

Helaine: I believe you are as long as you reference where the information is from.

[Audience Member's Name Withheld]: Okay. So we could say in our area where, you know, we rated the top in customer service or whatever. Wonderful. Thank you so much.

Jill: Do we have any other questions? Hands up high, this is your chance. Jackie, did you spot someone? Go ahead.

Audience Question: Hi, Helaine. [Audience Member's Name Withheld] from [Organization Name Withheld]. And will CMS be redlining or identifying changes in the final ANOC/EOC that are made from the draft?

Helaine: You know, we've had several requests for this. I'm afraid that the process we've done – through which we've done our changes is going to make it difficult for us to issue that. The other problem we have is we're bound to issue materials that are compliant with Section 508 of the ADA, and if we issue a redline document, I'm told, it is not compliant with 508. That being said, I know and I think we've talked about issuing instructions on how to do the compare documents function in Word. I know that's not ideal, but, you know, we appreciate that you want to track on the changes, and, again, we're looking into how we might be able to do that more effectively next year. But at this present time, we're not going to be able to issue that. I think your best bet is really just to do a compare documents from the previous version.

[Audience Member's Name Withheld]: And do you have any more of a definite date besides May?

Helaine: I do not, because it's not in my control. I appreciate that. I would very much like to know the dates myself, but we're just getting through the process, and we anticipate that May is going to be, hopefully early May, but I can't promise, so.

[Audience Member's Name Withheld]: That would be great. Thanks.

Helaine: Okay.

Jill: We have another question right here.

Audience Question: Hello. [Audience Member's Name Withheld] from [Organization Name Withheld]. And it's about the ANOC/EOC -- excuse me. I just want to know when the models will be out, the date, and will there be significant changes from the draft?

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Helaine: I think this is essentially the same question. I think we anticipate early May. I don't believe there are significant changes from the draft, but, again, we did get close to 2,000 comments that we've been working to address. So to the extent that there are changes, it was mainly based on the comments that we received from the industry. So, you know, and you'll – again, we'll issue guidance on how to do and compare documents and you'll be able to track that.

[Audience Member's Name Withheld]: Thank you.

Jill: Another question?

Audience Question: [Audience Member's Name Withheld], [Organization Name Withheld]. On the agent/broker training, will CMS be accepting RFPs to conduct the agent/broker training for 2013, and will the capacity of those organizations be one of the evaluation criteria?

Helaine: We're not going to issue a technical request for proposals, nothing like a formal request for proposals, because this isn't a contract process. Essentially it's probably going to be an informal submission request that we will then look at and issue sort of an approval, an informal approval. We've sort of been feeling around to figure out what's the right process and what do you call this effort, since there's no money attached to what our contracts office doesn't want to talk to us. They keep saying, "It's not our problem." So, yeah, we're working to clarify that.

We will likely be looking at capacity, but, you know, we're working on defining that criteria right now, so it's going to probably be some combination of – I mean, we're not technical experts, I'm not sure we're going to get to the point of wanting to assess the mechanism you're using for doing the training and whether it's the appropriate, you know, computer-based process. You know, I think we're more focused on the substance, but, you know, I think we're going to obviously want consider that there's going to be sufficient resources out there for the agents and wouldn't want to have, you know, just a very small number of available organizations to do training when there are so many agents nationwide. So I think we're going to try and balance that.

Jill: Another question right here.

Audience Question: [Audience Member's Name Withheld], [Organization Name Withheld]. Do you have any plans to release more guidance on the material codes, including descriptions or examples of materials that would fit into the different material code categories?

Helaine: We are looking at the codes now and trying to assess if there are changes we could make, maybe consolidating certain ones. We hadn't talked about issuing models or things that might – I don't mean models, but examples of what might fall into those codes, but we could certainly consider that if that would be helpful. But, yes, that is a process we're working on. Again, everything is sort of looking towards gearing up for 2012. So that's what we're working on at this point.

Jill: Any other questions? All right. Thank you very much, Helaine.

Helaine: Thank you.