



Medicare Communications and Marketing Guidelines & Provider Directory Updates

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Agenda

- Brief look at regulatory changes
- Take a closer look at the MCMG
 - Discuss what is the same
 - Highlight and review notable changes in the MCMG
 - Review common questions and updates by section
- Conclude with a Q&A

Changes to the Regulation



Regulatory Changes to Subpart V

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- .2260 – “Marketing” is redefined, and a new term of “Communications” is established
- .2262 – Added “d” that provided the authority to review communications
- .2268
 - Split former requirements between communications and marketing
 - Added restrictions for marketing during the OEP
- 422.111 – Updated to allow electronic delivery



The Medicare Communications and Marketing Guidelines

MEDICARE ADVANTAGE &
PRESCRIPTION DRUG PLAN

FALL CONFERENCE
AND WEBCAST
September 6, 2018
9:30 am – 4:30 pm EDT
CMS Grand Auditorium

What's in the MCMG?



MCMG

MCMG – Section 10

Introduction



Familiar Requirements

- Outlines who falls under the MCMG's guidance
- Reiterates that plans are responsible for compliance (including downstream entities)



Common Question

Section 10

9

- Does this replace the MMG?

MCMG – Section 20

Communications and Marketing Definitions



Familiar Requirements

Section 20

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- NOTHING!!!



Two Types of Materials/ Activities

Section 20

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- Communications: all materials/activities that provide information to current and prospective enrollees
- Marketing: a subset of communications that have the intent to influence a beneficiary's decision about their healthcare coverage



Marketing Defined

- Marketing's **intent**:
 - To draw attention to a plan or plans and
 - To influence an enrollment decision (including retention)
- Marketing's **content**:
 - Contains information about the plan's benefit structure, cost sharing, or measuring or ranking standards
 - Excludes materials that include the content but do not meet the intent described above



Key Concept: Intent/Content

Section 20

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- Both the intent and content must be met for a material/activity to meet the definition of marketing
- If it doesn't meet both, then it is a communication



Material Designation

Section 20

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- CMS provides material designations (communication or marketing) for all required materials in Section 100
- Plans must self-designate other materials and activities
 - Review regulation
 - Review guidance and examples provided in the MCMG
 - Consult with AM/Marketing Reviewer
 - E-mail: Marketing@cms.hhs.gov



Common Question

- What communication materials must be submitted and/or reviewed?
- The definition of marketing specifically mentions MA plans twice and could be read to only apply to Medicare Advantage.

General Communication Requirements



Familiar Requirements

Section 30

18

- Anti-discrimination
- Standardization of plan name
- Non-English
- Prohibited terminology
- Listing hours of operations
- Use of TTY numbers



30.7 – *Prohibited Terminology*

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- Prohibited terminology for non D-SNPs
 - Can't mislead beneficiaries by
 - Implying that the plan is designed for duals
 - Claiming or inferring that they have a relationship with the state if they do not
 - Targeting marketing efforts exclusively to duals



Common Questions

- 30.5 – Are we no longer permitted to post the TTY number in a TV ad in a different font size/style than the member services number?
- 30.8 – Are provider testimonials now allowed?

General Marketing Requirements



Familiar Requirements

- Nominal gifts
- Exclusion of meals
- Marketing of Star Ratings
- Marketing rewards and incentives

40.1 – *Plan Comparisons*

- Plans may now make comparisons to competitors
- Any comparison must be supported
- Materials that include plan comparisons are marketing
- Cannot be misleading



40.2 – Marketing through Unsolicited Contacts

24

- E-mail may be used
 - Must provide an opt-out
 - Does not extend to text messages or other means of direct messaging



40.3 – Marketing through Telephonic Contact

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- Still prohibited
- Plans and agents are permitted to contact members/clients to discuss plan business
 - Can't provide marketing content prior to 10/1
 - Disenrollment surveys can be conducted by plans
 - Cannot be used to market
 - Agents CAN conduct these surveys



40.7 – Prohibition of OEP Marketing

- Requirement comes from the 21st Century Cures Act
- During OEP, Plans **may** focus marketing on other enrollment opportunities (e.g., to age-ins)
- During OEP, Plans **may not** knowingly target beneficiaries who are in the OEP because they made a choice during AEP



Common Questions

- Is there a typo in section 40.7?

~~intended audience would not be considered promoted OEP marketing.~~

During the OEP, Plans/Part D Sponsors may not:

- Send unsolicited materials advertising the ability/opportunity to make an additional enrollment change or referencing the OEP
- Specifically target beneficiaries who are in the OEP because they made a choice during Annual Enrollment Period (AEP)
- by purchase of mailing lists or other means of identification
- Engage in or promote agent/broker activities that intend to target the OEP as an opportunity to make further sales
- Call or otherwise contact former enrollees who have selected a new plan during the AEP

~~For more information on the OEP, please reference to Chapter 2 - Medicare Advantage~~



Common Questions (continued)

Section 40

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- 40.1 – What documentation is needed? Are there restrictions on years and service areas?
- 40.7 – We typically market to MMPs and SNPs, is that still allowed?
- 40.7 – How will CMS distinguish compliant versus non-compliant marketing during the OEP?

Outreach Activities



Familiar Requirements

- Marketing and Sales Events
 - Streamlined but largely remains the same
- Personal/Individual Marketing Events
 - Streamlined but largely remains the same



50.1 – Educational Events

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- May include communication materials and activities
- May answer beneficiary questions
- May set up future marketing appointments
- May distribute business cards and contact information
- May NOT distribute marketing materials
- May NOT have a marketing event immediately after




Common Questions


Section 50

32

- About bullet #3 and #5 in Section 50.2...

- 
- Plans/Part D sponsors must submit scripts and presentations to CMS prior to use, including those to be used by agents/brokers.
 - Sign in sheets must clearly be labeled as optional.
 - Health screenings or other activities that may be perceived as, or used for, “cherry picking”.

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- 
- Plans/Part D Sponsors may not require attendees to provide contact information as a prerequisite for attending an event.
 - Contact information for potential enrollees provided for raffles or drawings for purposes other than may only be used for that purpose.



Common Questions (continued)

Section 50

33

- 50.1 – What does CMS mean by “immediately following an educational event”?
- 50.1 – Can SOAs be provided and collected at educational events?

MCMG – Section 60

Activities in a Healthcare Setting



Familiar Requirements

- Provider affiliation announcements
- No marketing in the healthcare setting
- Plans are responsible for oversight of providers
- Providers may not:
 - Accept/collect SOA forms or enrollment forms
 - Persuade a patient to enroll based on financial interests
 - Be compensated for marketing or enrollment activities
 - Offer inducements for enrollment



60.1 – *Provider-Initiated Activities*

- Activities conducted at the request of the patient or as a matter of a course of treatment – NOT at the request of or for a plan(s)
- In this context, there is more flexibility than when acting on behalf of the plan
 - May discuss benefits and cost sharing information
 - May distribute CMS-produced materials
 - May provide the names of plans they are contracted with



60.2 – *Plan-Initiated Provider Activities*

- Communication materials may be in the healthcare setting
- Provider activities that meet the definition of communications can be conducted in the healthcare setting



60.4 – Plan Activities in the Healthcare Setting

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- Waiting rooms are now considered common areas
- Communication materials may be distributed/displayed in the healthcare setting



60.4.1 – Special Guidance for I-SNPs and LTC Residents

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- I-SNPs must put the appropriate boundaries in place between clinical and sales staff
- Staff working in a social worker capacity:
 - May provide information, including marketing materials
 - May NOT include enrollment forms (unless requested)
 - May NOT collect SOA or enrollment forms
- Additional actions must be beneficiary initiated



Common Questions

- 60.1 – If a provider persuades patients to switch to a specific plan due to higher physician reimbursement, but the plan has not requested or instructed the provider to do so, is this activity considered a “plan-initiated” provider activity?
- 60.4 – What are common areas with regard to a pharmacy?

Websites and Social/Electronic Media



Familiar Requirements

- The “musts” and “may nots” under general requirements
- Required content
- Searchable directories and formularies



New Guidance

Per the email blast sent on 8/10, our guidance on websites has changed:

- Any website with marketing content must be submitted
- Websites with marketing content are F&U
- If a website content is only communication or CMS-required content, then it does not require submission



Common Questions

- 70.1 – What if a website only has CMS-required content and NO marketing content?
- 70.1.2 – CMS says “posted by October 15th.” Can plans post materials earlier?

MCMG – Section 80

Call Centers



Familiar Requirements

Section 80

46

- General call center requirements
- Informational script requirements
- Telesales scripts (marketing)
- Pharmacy technical help call center requirements



80.2 – Call Center Hours of Operations

- Extended call center hours based on the OEP
 - October 1 through March 31
 - Live CSRs available 7 days, from 8:00 am to 8:00 pm
 - Alternative technologies for Thanksgiving and Christmas
 - April 1 through September 30
 - Live CSRs Mon-Fri, from 8:00 am to 8:00 pm
 - Alternative technologies for Sat, Sun, and Fed Holidays



80.7 – Activities That Do Not Required a Licensed Agent

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- License Agents may also be customer service representatives
- Cannot act as both simultaneously
- Must make it clear to the caller when their role is changing



Common Question

- 80.2 – Do the days/hours of operation also apply to downstream entities?
- 80.2 – Do the days/hours of operation apply to sales lines?

Tracking, Submission, and Review Process

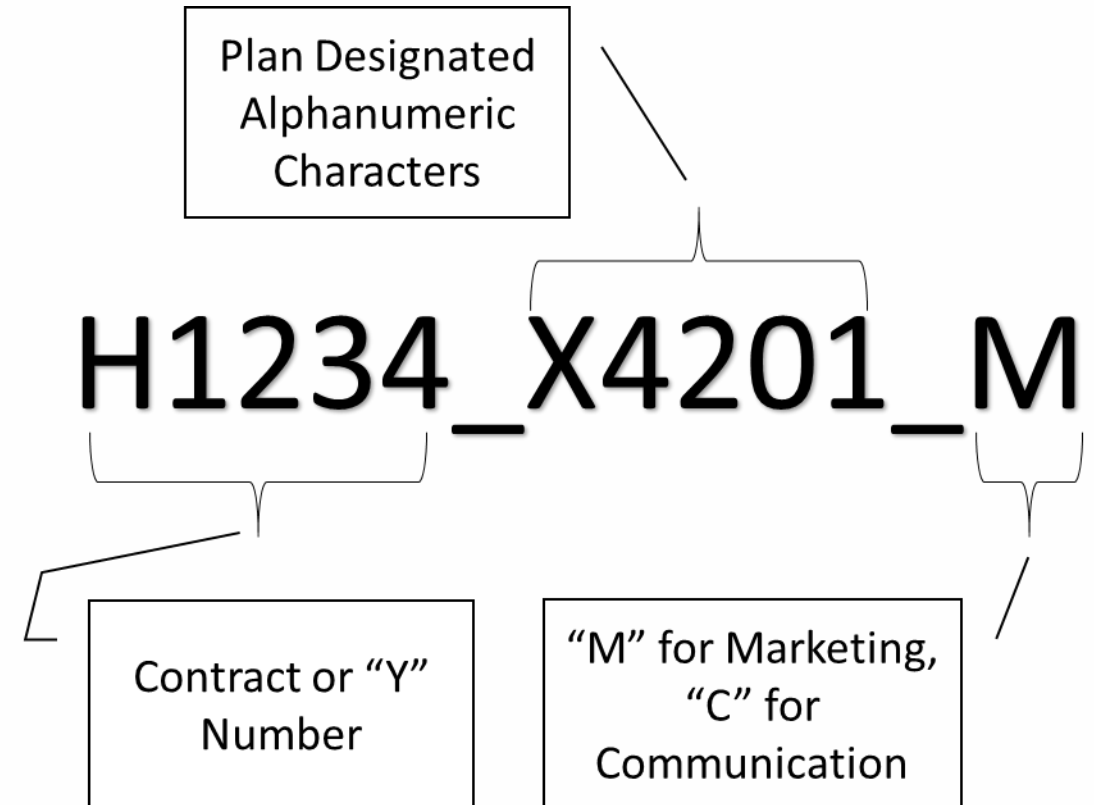


Familiar Requirements

- Review time periods for marketing materials
- HPMS submission process
- Multi-plan submission process
- Model materials
- Template materials

90.1 – Material ID

- New Material ID methodology
- Not required on agent-developed communications
- No longer require material status and date
- Webpages do not require the “C” or “M”





90.1.1 – *Materials Subject to Submission*

- All marketing materials require submission
- Only those communication materials designated by CMS require submission

90.2 – Material Replacement

- New HPMS functionality
- Allows update of certain existing materials without having to resubmit
- Only applicable to
 - ANOC
 - SB
 - EOC
 - Star Ratings document
 - Sales scripts & presentations
 - Enrollment scripts



90.3 – *Non-English and Alt Format Materials*

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- No longer require submission when they are a version of a previously submitted material
 - Materials should use the same material ID number
- Multi-lingual materials still require submission
 - Include “multi-lingual” in the comment field
- Materials that are only created in a non-English language must be submitted with English translation



90.4 – Submission of Websites and Webpages for Review

56

- Website submissions are F&U
 - Initial submission is just the URL
 - Updates are the URL and an outline of changes
- Keep in mind, two different codes – required website (4006 code) and “additional websites” (4037 code)



Common Questions

- 90.1 – Do I have to change the material ID for previously submitted materials?
- 90.1 – Material ID – If it's not submitted into HPMS, does it still require a material ID?
- 90.6 – Will certain material types still be designated as "Non-Marketing"? If so, does this impact the last part of the material ID number?

MCMG – Section 100

Required Materials



Familiar Requirements

Section 100

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- Mailings to multiple beneficiaries in one household
- Changes and corrections to existing documents
- Required materials



100.2 – *Electronic Delivery of Materials*

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- Two distinct processes
 - 100.2.1 – Notification of Availability of Electronic Materials
 - 100.2.2 – Electronic Delivery of Required Materials

Let's take a closer look...



100.2.1 – Notification of Availability of Electronic Materials

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- Does NOT require prior beneficiary approval
- Only for the following materials
 - EOC, Provider/Pharmacy Directory, and Formularies
- Plans can provide a notice on how to access the materials



100.2.1 – Notification of Availability of Electronic Materials (continued)

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- Notice must include:
 - Website address to access materials
 - Date the materials are available
 - Phone number to request hardcopies
- One notice may be used for multiple materials
- Notices should be sent in September and in time for AEP
- If an enrollee requests a hardcopy, plans must continue to provide a hardcopy



100.2.2 – *Electronic Delivery of Required Materials*

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- Requires prior beneficiary approval
- For a much broader number of materials (as outlined in Section 100)
- Process must:
 - Specify media type
 - Provide opt-out
 - Provide hardcopies when requested



100.2.2 – *Electronic Delivery of Required Materials (continued)*

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- Must mail hardcopies if the delivery method is no longer working (e.g., bounced-back emails)
 - Hardcopies must continue until a valid email address is received
- Delivery date is when email is sent
- If a plan encounters an invalid email, the delivery date is when the email was sent, not when the hardcopy is sent/received

100.4 – *List of Required Materials*

- Identifies each material as marketing or communication
- Includes pertinent information for each material:
 - Who
 - Timing
 - Delivery method
 - HPMS info
 - Format
 - Guidance/information
 - 5% translation requirements
- Only required materials have to be in a 12pt font



Common Questions

- 100.2.1 – The 9/24 date does not give us enough time.
- 100.2.1 – One sentence says, “Part D sponsors may send existing (i.e., not new) enrollees a notice...”
- 100.2.1 – Is there any flexibility for provision that requires hardcopy requests to remain until the enrollee leaves the Plan or requests that hard copies be discontinued?



Common Questions (continued)

Section 100

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- 100.4 – What does CMS mean by “not applicable” or “not required” under HPMS timing and submission?
- 100.4 – If I modify a model material, do I have to submit it for review?

MCMG – Section 110

Agent/Broker Activities, Oversight, and Compensation Requirements



Familiar Requirements

Section 110

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- Agent requirements
- Plan oversight responsibilities
- Compensation
- Rapid disenrollment



New Guidance

Section 110

70

- Agents may use CMS-created materials without submission
- Agents may provide business reply cards at educational events
- Create and distribute communication materials without a material ID number

NOTE: Plans may impose additional restrictions via their contracts



Common Questions

Section 110

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- 110.7.1 – Are there typos in the rapid disenrollment section?
- What about beneficiary referrals?

Use of Medicare Beneficiary Information Obtained from CMS



Familiar Requirements

Section 120

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- Section 120 (formerly Section 160 of the MMG) has been consolidated, but the core requirement remains the same
 - Direct to the guidance outlined in the data use agreement
- Outside of the data use agreement – a pre-existing relationship allows for additional flexibility
- Non-health-related mailings require consent

MCMG – Appendix 2

Disclaimers



New Guidance

- Fewer disclaimers
- Disclaimers have been streamlined for better readability and comprehension
- Information for applicable materials and material types (marketing/communication)
- Exempt materials, formally under the Federal Contracting Statement, now apply to all disclaimers



Common Questions

- That's it? What about the other disclaimers in the previous MMG?
- Can we use existing stock for envelopes?
- “Important [insert plan name] Information” – what if the plan's name is already on the envelope? And, what do you mean by “plan name”?

Pre-Enrollment Checklist



New Guidance

- Based on consumer testing
- Allows the reduction of disclaimers on marketing materials
- More beneficiary friendly



Common Questions

- Can I alter the checklist?
- Does the checklist need to be completed or handed in with an application?
- What about online enrollments?
- What about telephonic enrollments?
- Can employer group plans be exempt from using the PECL?

Additional MCMG Sections...

- Appendix 1 – Definitions
 - Minor updates to account for new definitions of marketing and communications
- Appendix 4 – External Links
 - Added to provide helpful resources that relate to marketing and communications
- Appendix 5 – Summary of Benefits Instructions
 - Minor updates



Additional MCMG Sections... (continued)

- Appendix 6 – Employer/Union Group Health Plans
 - Formerly Section 130 of the MMG
 - No substantive changes
- Appendix 7 – Use of the Medicare Mark for Part D Sponsors
 - Formerly Section 150 of the MMG
 - No substantive changes



MCMG – Looking Forward

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- Updating HPMS marketing submission codes
- Retrospective reviews will be used to monitor compliance with new requirements
 - Proactive reviews
 - Reactive reviews
 - May include marketing and communication materials
 - Plans may receive requests for communications to be submitted for retrospective reviews



Questions?

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