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Program of All-Inclusive Care for the Elderly (PACE)
Chapter 3 – PACE Marketing Guidelines

(Rev. 5, Issued xx-xx-xxxx)

Contents

10 - Introduction

The PACE Marketing Guidelines (PMG) reflect the Centers for Medicare & Medicaid Services' (CMS) interpretation of the marketing requirements and related provisions of the Program of All-Inclusive Care for the Elderly (PACE) rules (Chapter 42 of the Code of Federal Regulations (CFR), Part 460. See Appendix 2 for a list of related laws and regulations.) The PMG are for use by PACE Organizations (POs).

It is the PO's responsibility to have a system in place that ensures all materials used when marketing meet current regulations and guidance. Moreover, the examples of marketing materials and promotional activities provided in this guidance are not all-inclusive. POs should apply the principles outlined in this guidance to all relevant decisions, situations, and materials. Any new rulemaking or interpretative guidance, such as a Health Plan Management System (HPMS) memorandum, may update the marketing guidance provided here and are generally effective at the date of the memorandum's issuance unless specified in the memorandum. Specific questions regarding a marketing material or marketing practice not addressed in the PMG should be directed to the PO's CMS Account Manager (AM). The CMS AM collaborates with the State administering agency (SAA) in responding to PACE marketing questions and in the review and approval of PACE marketing materials.

POs are responsible for following all Federal laws and regulations that impact marketing including but not limited to those listed in Appendix 2 of this document. Additionally, POs are responsible for ensuring compliance with any specific State requirements for PACE marketing. The responsibility for compliance with all aforementioned laws and regulations extends to activities of POs, their subcontractors, downstream entities, and/or delegated entities.

20 – Materials Not Subject to Marketing Review

42 CFR 460.82(b)

The following items are materials that are not subject to CMS marketing review, should not be submitted:

- HIPAA Privacy notices (which are subject to enforcement by the Office of Civil Rights);

- Press releases that do not include any PACE-specific information (e.g., information about benefits, premiums, co-pays, deductible, benefits, how to enroll, networks, etc.);
- Advertising/promotional materials (see definitions);
- Banner and Banner-Like Advertisements (see definitions);
- Outdoor Advertising (ODA) (see definitions);
- Certain participant newsletters, unless sections are used to encourage enrollment, disenrollment, or to communicate with members on product-specific information (e.g., benefits or coverage, participant operational policies, rules and/or procedures);
- Blank letterhead/fax coversheets that do not include promotional language;
- General health promotion materials that do not include any specific PO-related information and are educational in nature (e.g., health education and disease management materials);
- Materials used in the education of participants, family members/caregivers, and Ad-Hoc Participant Communications (see definitions) that are not being distributed to prospective participants, or that contain information that is not specific to PACE;
- Participant surveys;
- Newspaper and television press coverage unless they include detailed information about the program, eligibility, services or enrollment; and
- Newsletters to Professional Referral Sources to keep them up-to-date on the PACE program.

Items that advertise the PO's name and provide contact information without providing more detailed information about the program, such as a billboard, bus or bench advertisement (ad), etc., are not considered marketing materials. The purpose of these items is solely to get the consumer's attention and provide contact information so that they can request more information.

POs are responsible for ensuring that all of these materials (see previous paragraph) meet the applicable requirements in this PACE marketing guidance. In addition, POs should have a means of tracking and maintaining these materials and making them available to CMS upon request.

30 – PO Responsibilities

30.1 Program Agreement Requirement and Limitations on Distribution of Marketing Materials and Activities

42 CFR 460.30(a)

POs may not begin marketing until they have been approved and have received a copy of their program agreement signed by all required parties. Additionally, POs may not market new centers or zip codes until their amended program agreement has been approved.

30.2 PO Responsibility for Subcontractor Activities and Submission of Materials for CMS Review

42 CFR 460.62(a)(3), 460.82(e)

POs are responsible for all marketing materials used to market their organization(s), including those materials used by any subcontractors. All marketing materials used by POs or their subcontractors must be submitted by the PO (or its designee) to CMS for review and approval.

30.3 – Anti Discrimination

42 CFR 460.32(a)(2), 460.82(e)(1)

POs are prohibited from any discriminatory marketing practices with the exception of being able to target those individuals who may be eligible for the PACE program.

30.4 – Requirements Pertaining to Non-English Speaking Populations

42 CFR 460.82(c)

All POs must have interpreter services available to assist non-English speaking participants. POs must provide printed copies of all marketing materials to prospective and current participants in English and any other principal languages of the community, as determined by the State.

> Note: PACE Organizations are considered covered entities under section 1557 of the Affordable Care Act (ACA). As such, POs are required to include the Notice/Statement of Nondiscrimination and appropriate taglines with all significant materials. Please refer to Appendix 2 for additional resources on 1557.

30.5 – Accessibility of Marketing Materials/Alternate Formats

42 CFR 460.82(c)(2)

POs must ensure all marketing information is available in alternate formats so that it is accessible and appropriate for individuals who have disabilities (e.g., those with visual or hearing impairments). This includes providing documents in braille, if necessary or requested. Reasonable accommodations for communicating marketing information must be made in accordance with the Americans with Disabilities Act and the Rehabilitation Act (see Appendix 2). CMS expects that a PO will make the necessary accommodations (providing the alternate format) as expeditiously as the situation requires. A PO may substitute an audio format with the agreement of the current or prospective participant.

40 – General Marketing Requirements

40.1 – Hold Time Messages

42 CFR 460.82(a)

Hold time messages (recorded information played to a caller while waiting on hold) that discuss health-education features and other general information (e.g., hours of operation, flu shot reminders) or other generic statements such as "Thank you for holding" are not considered marketing materials.

Hold times for callers should be kept at a minimum. In addition, POs should not use hold messages as a means of marketing to prospective and/or current participants since the hold time may not allow the listener to hear the full message.

40.2 – Marketing Material Identification

42 CFR 460.82(b)

POs are required to place a unique marketing material identification number on all marketing materials (except as indicated below) to facilitate CMS review and oversight of marketing materials.

The material ID is made up of two parts: (1) PO contract (i.e., HXXXX), and (2) any series of alpha numeric characters chosen at the discretion of the PO.

The following marketing materials do not require a marketing material ID number on them:

- Identification (ID) cards
- Radio ads, social media comments and posts

40.2.1 – Marketing Material Identification Number for Non-English or Alternate Format Materials

42 CFR 460.82(b)

Non-English or alternate format materials must be given a unique material ID using the method outlined above. When submitting these materials, POs must designate they are non-English or alternate format versions in HPMS. See sections 90.2.1 for additional information about the submission of non-English and alternate format materials.

40.3 Font Size Rule

42 CFR 460.82(e)(2)

All text included on materials, including footnotes, must be printed with a font size equivalent to or larger than Times New Roman twelve (12)-point. The equivalency standard applies to both the height and width of the font.

Exceptions:

- Television Ads
- ID cards
- Internal tracking numbers
- Logos/logos with taglines

  Note: Because CMS and the PO do not have any control over the actual screen size shown on individuals' computer screens that can be adjusted by the user, for internet marketing materials, the twelve (12)-point font requirement refers to how the PO codes the font for the Web page rather than how it actually appears on the user's screen.

40.4 Studies and Statistical Data

42 CFR 460.82(e)(2)

POs may refer to the results of studies or statistical data in relation to customer satisfaction, quality, or cost as long as specific study details are given. If a PO uses a non-CMS study/survey (i.e., a study that was not

created or sponsored by CMS) in its marketing materials, the PO must include the following information, in text or as a footnote, on the marketing piece(s):

- The name of the organization sponsoring the study;
- Information about the PO's relationship with the entity that conducted the study; and,
- The publication title, date, and page number.

  Note: This information should also be included in the HPMS marketing material transmittal comments field when submitting the document that includes the reference. Marketing Reviewers/Account Managers may request additional information about the study/survey.

Examples of material submission processes for POs referencing studies or statistical data may include the following:

- If a PO uses study data that includes aggregate marketplace information on several other POs, it will not be required to submit data on all POs included in the study. However, the study details, such as the number of POs included, must be disclosed;
- If a PO references a CMS study, it should include reference information (e.g., publication, date, page number) in the HPMS Marketing Material Transmittal comments field or as a comment on a separate page if the PO is not submitting the materials through HPMS. However, the PO is prohibited from using CMS, Medicare, or the Department of Health & Human Services (DHHS) logos; and
- If a PO references non-CMS sponsored studies, it should submit the reference(s), sample size, and number of POs surveyed in the HPMS Marketing Material Transmittal comments or as a comment on a separate page if the PO is not submitting the materials through HPMS.

40.5 – Prohibited Terminology/Statements

42 CFR 460.82(a)(2), (e)(2)

CMS prohibits the distribution of marketing materials that are materially inaccurate, misleading, or otherwise make misrepresentations. *This requirement extends to contractors that may be directly or indirectly involved in marketing the PO.*

POs may not:

- Misrepresent themselves, their organizations, or their covered benefits and services;
- Claim within their marketing materials that they are recommended or endorsed by the The U.S. Department of Health and Human Services (HHS), CMS or Medicare. This includes use of the DHHS name and logo, CMS's name and logo and the words "Medicare" or "Medicaid" in a manner that conveys the false impression that such item is approved, endorsed, or authorized by DHHS or CMS;
- Use absolute superlatives (e.g., "the best," "highest ranked," "rated number 1") and/or qualified superlatives (e.g., "one of the best," "among the highest rank") unless they are substantiated with supporting data provided to CMS as part of the marketing review process or they are used in logos/taglines. The superlatives used and the data provided must be in context and may not mislead consumers; or
- Other than the exceptions noted in section 40.4, compare their PO(s) to another PO by name without written concurrence from all POs being compared. This documentation must be included when the material is submitted to CMS for review.

POs may:

- State that the PO is approved for participation in the Medicare/Medicaid programs and/or that it is authorized to administer Medicare/Medicaid benefits;
- Use the term "Medicare covered" or "Medicaid covered" to describe the benefits and services within their marketing materials; and
- Use qualified superlatives (e.g., "one of the best", "among the highest ranked"), provided they can be substantiated with supporting data provided to CMS as part of the marketing review process or they are used in logos/taglines. The qualified superlatives used and the data provided must be in context and may not mislead consumers.

40.6 – Product Endorsements/Testimonials

42 CFR 460.82(e)(2)

In order to avoid being misleading, product endorsements and testimonials must adhere to the following guidelines:

- The individual providing the testimonial or endorsement must identify the PO by name
- If the endorsement or testimonial is from a PACE participant, or the PACE participant's family member/care giver, the PACE participant must be enrolled at the time the endorsement or testimonial was created and the PACE participant or PACE participant's family member/care giver must give his or her signed consent for the PO to use his or her statements and/or images;
- If the individual is paid to endorse or promote the PO, this must be clearly stated (e.g., "paid endorsement");
- If the individual, such as an actor, is paid to portray a real or fictitious situation, the ad must clearly state it is a "Paid Actor Portrayal;"
- The endorsement or testimonial cannot use fictitious quotes by physicians or other health care providers; and
- The endorsement or testimonial cannot use negative testimonials about other POs.

  Note: Re-publication of an individual user's content or a comment that promotes a PO from social media sites (e.g., Facebook, Twitter, YouTube, LinkedIn, Scan Code, or QR Code) is considered a product endorsement/testimonial and must adhere to the guidance in this section.

40.7 – Use of Teletypewriter (TTY) Numbers

Section 504 of the Rehabilitation Act

A TTY telephone number must appear in conjunction with the PO's customer service telephone number in the same font, size, and style as the other telephone numbers, except as outlined below. POs can either use their own TTY telephone number or State relay services, so long as the telephone number included is accessible from TTY equipment. TTY customer service telephone numbers must be toll-free.

Exceptions:

- Outdoor advertising (ODA) or banner/banner-like ads
- Radio ads and radio sponsorships (e.g., sponsoring an hour of public radio)

In television ads, the TTY number may be a different font, size, or style than other telephone numbers to limit possible confusion.

40.8 Marketing of Alternative Care Setters (ACS)
42 CFR 460.82(a)

To provide PACE participants with flexibility regarding access to quality care, CMS has allowed POs to offer some services in other settings which are referred to as an ACS. An ACS can be any physical location in the PO's CMS approved existing service area other than the participant's home, an inpatient facility, or PACE center. When marketing ACSs, POs must ensure the following:

- Make it clear that ACSs are not PACE Centers
- Outline that ACSs offer a more limited scope of care

50 – Applicable Disclaimers and Required Language
50.1 Information on the restriction of services
42 CFR 460.82(d)(1)

Marketing materials must inform a prospective participant that he or she must receive all needed health care, including primary care and specialist physician services (other than emergency services), from the PO, or from an entity authorized by the PO.

50.2 Personal Liability of Costs
42 CFR 460.82(d)(2)

All marketing materials must state clearly that PACE participants may be fully and personally liable for the costs of unauthorized or out-of-PACE program agreement services.

50.3 Disclaimers Applicable to Advertising that Promotes a Nominal Gift
42 CFR 460.82(e)(3)

POs must include a written statement on all marketing materials promoting drawings, prizes or any promise of a free gift that there is no obligation to enroll in PACE. For example:

- "Eligible for a free drawing and prizes with no obligation," or
- "Free drawing without obligation."

60 – Required Information to Be Conveyed Through Marketing Materials

42 CFR 460.82(a)(1)

Through their marketing materials, POs are required to convey the following written information to participants:

- An adequate description of the PO's enrollment and disenrollment policies and requirements;
- PACE enrollment procedures;

  Note: Additional information on enrollment and disenrollment can be found in the PACE Manual at http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Internet-Only-Manuals-IOMs-Items/CMS019036.html

- Description of benefits and services;
- Premiums; e.g.,
  - What you pay for PACE depends on your financial situation.
  - If you have Medicaid, you won't pay a monthly premium for the long-term care services.
  - If you don't qualify for Medicaid, but you have Medicare, you'll be charged a monthly premium to cover the long-term care services and a premium for Medicare Part D drugs.
  - There's no deductible or copayment for any drug, service, or care approved by your health care team.
  - If you don't have Medicare or Medicaid, you can pay for PACE privately.
- Other information necessary for prospective participants to make an informed decision about enrollment.

70 – Promotional Activities

70.1 - Prospective Participant Contact

42 CFR 460.82(e)

POs and their subcontractors are prohibited from engaging in direct, unsolicited contact with non-referred prospective participants, including outbound calls.

Specifically, POs may not:

- Make unsolicited outbound calls or send emails to prospective participants, family members, and/or caregivers about other business as a means of generating leads for the PO;
- Conduct unsolicited door-to-door marketing;
- Call former participants who have disenrolled, or current participants who are in the process of disenrolling, as a means of re-enrolling or retaining these individuals;
- Call or email prospective participants who attended a PACE marketing or informational event, unless the individual gave express permission at the event for a follow-up call or email;
- Advertise outside of the PO's defined service area unless such advertising is unavoidable (e.g., advertising in print or broadcast media with a national audience or with an audience that includes some individuals outside of the service area); in this instance, the PO should clearly disclose their service area;
- Confirm receipt of marketing information unless the marketing materials were requested by prospective participants, family members, and/or caregivers;
- Purchase or rent email lists; or
- Email prospective participants at email addresses obtained through prospective participants' friends or referrals.

POs may conduct in the following activities:

- Contact their participants, their family members, and/or caregivers to conduct normal business related to enrollment in PACE, including calls to participants who have been involuntarily disenrolled to resolve eligibility issues;
- Call former participants after the disenrollment effective date to conduct disenrollment surveys for quality improvement purposes. Disenrollment surveys may be done by phone or sent by mail, but neither calls nor mailings may include sales or marketing information;
- Call or email participants who have expressly given permission for a PO to contact them and provide an opt-out process for participants/family members/caregivers who no longer wish to receive email communications;
- Return prospective participants, family members, and/or caregivers phone calls, messages, or emails, as these are not considered unsolicited calls;

- Contact participants/family members/caregivers via an automated telephone notification to inform them about general information such as the availability of flu shots, upcoming PACE changes and other important PACE information; and
- Call or email prospective participants, family members, and/or caregivers based on referrals from unsolicited contacts.

  Note: POs may make an initial follow-up call or mailing to referrals from a participant's family, friends or neighbor, or from community partners and resources such as social workers, physician offices, and housing managers. However, if, upon initial contact, the prospective participant/family member/caregiver shows no interest, further direct contact is prohibited.

70.2 – Promotional Activities

42 CFR 460.82(e)

Generally, promotional activities are designed to attract the attention of prospective participants and/or encourage retention of current participants. In addition to the guidance on nominal gifts, any promotional activities or items offered by POs must:

- Have only nominal value (be worth no more than $15) based on the fair market value of the item or less, with a maximum aggregate of $50 per person, per year;
- Be offered to all people regardless of enrollment and without discrimination;
- Not be items that are considered a health benefit (e.g., a free checkup); and
- Not be tied directly or indirectly to the provision of any other covered item or service.

  Note: POs should track and document items given to current participants. POs are not required to track pre-enrollment promotional items on a per person basis; however, they may not willfully structure pre-enrollment activities to circumvent the $50 per year aggregate maximum.

70.3 – Nominal Gifts
42 CFR 460.82(e)

POs may offer gifts to prospective participants, as long as those gifts are of nominal value, provided regardless of enrollment, and without discrimination.

The following rules must be followed when providing nominal gifts:

- If a nominal gift is one large gift (e.g., a concert, raffle, drawing), the total fair market value must not exceed the nominal per person value based on attendance. For example, if 10 people are expected to attend an event, the nominal gift may not be worth more than $150 ($15 for each of the 10 anticipated attendees). For planning purposes, anticipated attendance may be used, but must be based on actual venue size, response rate, or advertisement circulation.
- Nominal gifts may not be in the form of cash or other monetary rebates, even if their worth is $15 or less. Cash gifts include charitable contributions made on behalf of prospective participants, and those gift certificates and gift cards that can be readily converted to cash, regardless of dollar amount.

  Note: POs should refer to the DHHS Office of Inspector General's (OIG's) website (available at http://www.oig.hhs.gov/) regarding advisory opinions on gifts and gift cards.

70.4 Use of subcontracted or downstream entities
42 CFR 460.82(e)(4)

POs are prohibited from using third parties or sub-contractors to market PACE as a means of soliciting enrollment.

80 – Reserved for Future Section

90 – The Marketing Review Process

As of 1/1/2017 all POs must submit all marketing materials subject for review through HPMS, including those materials associated with PACE initial or service area expansion (SAE) applications. The PACE Marketing Module in HPMS is an automated tool used to enter, track, and maintain materials submitted for review and approval. In addition, the module was created to facilitate a dual review, where both the Regional Office and State Reviewers

can collaboratively review marketing materials. Except where otherwise noted, all marketing materials must be reviewed and approved by CMS and the State prior to their use by the PO.

90.1 – PO Responsibilities

42 CFR 460.82(b)

POs must conduct a quality check and ensure that all marketing materials are consistent with this chapter and all other relevant CMS and state issued guidance and instructions prior to submitting materials for review. Generally, CMS does not review marketing materials for typographical or grammatical errors, unless such errors render the materials inaccurate or misleading.

90.2 – Material Submission Process

42 CFR 460.82(b)

When POs submit a marketing material for review, they must select both a CMS and State Reviewer. POs should refer to the HPMS Marketing Module User Guide for questions regarding the PACE Marketing Module including detailed instructions on how to submit materials in HPMS.

> Note: Under certain circumstances, and with prior approval from CMS, materials may be submitted outside of HPMS.

90.2.1 – Submission of Non-English and Alternate Format Materials

42 CFR 460.82(b)

Non-English and alternate format material must either be based on previously approved English/standard print versions of the same material, or include a back translation with the non-English/alternate format material submission. Both non-English and alternate format materials should be submitted as alternate format materials in HPMS. If the alternate format cannot be submitted to HPMS (e.g., braille), the PO should contact its Account Manager about other methods of submission.

> Note: POs do not need to resubmit large-print materials as an alternate format material in HPMS if the only modification to the material is an increased font size and/or layout changes due to the increased font size.

POs may submit multi-lingual material that contains English and another language (or languages). A material will only qualify as multi-lingual if it

always incorporates English and the other language(s). POs should include a note in the comments field specifying the material is multi-lingual. Multi-lingual material should not be submitted as an alternate format material in HPMS.

Any changes or revisions that are made to the original English version should be accurately reflected in non-English and alternate format materials and re-submitted as required.

Note: See Appendix 1 for a definition of alternate format materials.

90.2.2 – Submission of Websites for Review

42 CFR 460.82(b)

If the PO maintains a website, the POs must submit in HPMS all required website content listed in section 100 for review. POs should submit a document that includes links to any PO websites. CMS reviewers should be able to review the information as it will be displayed on the website. The link(s) may provide access to a live website or a test website, provided that the test website displays information as it will appear to the beneficiary and/or consumer. Submitting screen shots or text is not acceptable. If the option to view the website(s) online is not feasible, the PO should work with their Account Manager to submit their website in an alternative way.

Once a PO's website is reviewed and approved in its entirety, the PO may update specific pages of the same website by submitting only the modified pages. Website page updates to the website require re-upload and review. These pages should be submitted on a document that includes links to the modified pages. Any updates to pages should be submitted with their own unique material ID and date stamped accordingly.

POs with an approved application may make the website available for public use during the CMS review period; however, POs must indicate that the website is pending CMS review until CMS has either approved or disapproved the website. If the website, or portions of the website, are disapproved, POs must submit the revision to CMS within 20 calendar days. POs may not post websites for new centers or zip codes until their amended program agreement has been approved.

POs are not required to resubmit materials that have received prior approval for posting on their website. Any documents that require

submission to HPMS should not be posted on the website until they are approved or accepted by CMS.

See section 100 for required website content.

90.2.3 – Submission of Mobile Applications (Apps)

42 CFR 460.82(b)

If a PO would like to use a mobile app for marketing to prospective participants, the mobile app must be submitted for approval. A PO should submit a document in HPMS with either:

- A link to access the mobile app online; or
- A statement that the app will be submitted to the Account Manager outside of HPMS. POs should include the name(s) of the person(s) at CMS who will receive the app for review.

If the option to view the mobile app online is not feasible, the PO should contact its AM to discuss how it will provide access to the app. It is not acceptable to submit screen shots or text on a separate document unless instructed by the AM.

90.3 - Time Frames for Marketing Review

42 CFR 460.82(b)(3)(i)

Marketing materials submitted for review will have a review timeframe of 45 calendar days. The marketing review time period begins on the date a material is submitted in HPMS.

90.4 – HPMS Material Statuses

42 CFR 460.82(b)

All marketing materials in HPMS will have an indication of their disposition. The disposition will be: approved, disapproved, withdrawn, or alternate format.

> Note: If a PO does not have signed program agreement with CMS, all submitted and approved marketing material will be considered a conditional approval, meaning that the material is approved on the condition that the PO receives an executed program agreement. Materials may not be used until the PO has an executed program agreement.

90.4.1 - Approved
42 CFR 460.82(b)

Material marked as "approved" indicates that it is approved for use in the format in which it was submitted and may be distributed by a PO. However, CMS may at any time require a PO to change previously approved marketing materials, if they are found to be inaccurate, altered, or otherwise non-compliant.

90.4.2 - Disapproved
42 CFR 460.82(b)

Material marked as "disapproved" indicates that the material does not comply with applicable standards, such as regulations, laws, and standards discussed in the PMG or other relevant guidance. CMS will provide a reason for the disapproval in HPMS. Materials with a disapproved status may not be used.

90.4.3 – Withdrawn
42 CFR 460.82(b)

POs may request to withdraw a marketing submission prior to CMS reviewing the material. POs should submit a written request to their AM stating the reason(s) for the withdrawal.

90.4.4 – Alternate Format
42 CFR 460.82(b)

Non-English and alternate format materials will be marked as "Alternate Format".

90.5 - Resubmitting Previously Disapproved Pieces
42 CFR 460.82(b)

In order to expedite the review, POs should clearly indicate all changes and/or updates made to a material, which has been previously disapproved, when it is resubmitted. POs should highlight any text changes and/or insert notes to altered areas on the material. POs may develop an alternative process for identifying changes (e.g., bulleting all changes made within the comments section of HPMS when submitting the material), provided they receive approval from the Account Manager. Please see the HPMS Marketing

Module User's Guide for additional information on the submissions of previously disapproved materials.

90.6 Template Materials

42 CFR 460.82(b)

A "template material" is any marketing material that includes placeholders for variable data to be populated at a later time by a PO. Utilizing template materials allows a PO to submit one "master document." Variable elements can be specific to one PACE center or can apply to multiple PACE centers within the same PO. Examples of variable elements include PO name, address, telephone number, URL's, etc.

Template material must be submitted to CMS and show how the placeholders will be populated by inserting the name of the field within greater than and less than signs (e.g., <PO name>), or populate the placeholder fields with all variables within the greater than and less than signs (e.g., <PO name Center A> <PO name Center B> <PO name Center C>). Template materials will have only one marketing identification number regardless of the number and combination of variable elements.

90.6.1 - Template Materials Quality Review and Reporting of Errors

42 CFR 460.82(b)

CMS may conduct retrospective reviews, quality checks, or audits of populated templates. When errors are discovered, POs may be required to remedy the error by providing participants with updated information.

Similarly, when errors are discovered by a PO, the PO must report the errors to its Account Manager. In addition, POs may be required to remedy the error by providing participants with updated information.

> Note: Any updated information materials must be reviewed and approved by CMS prior to their use.

90.7 - Review of Materials in the Marketplace

42 CFR 460.82(b), 460.190, 460.192

CMS periodically conducts reviews of PO materials. Reviews may include, but are not limited to, the following activities:

- Review of on-site marketing facilities, products, and activities during regularly scheduled contract compliance monitoring visits; and
- Random review of actual marketing pieces as they are used.

100 Websites and Social/Electronic Media

100.1 General Website Requirements

42 CFR 460.82(a)(2), 460.82(b), 460.82(e)

POs are not required to have a website. POs that choose to have a website must ensure that the website meets all marketing requirements as outlined in this chapter. This includes any parent company websites that provide PACE content. In addition, all PO websites must be compliant with web-based technology and information standards for people with disabilities, such as those specified in section 508 of the Rehabilitation Act which pertains specifically to government-sponsored websites, as well as the requirements under section 1557 of the Affordable Care Act (see Appendix 2).

POs that choose to have a website must:

- Ensure that it is clear and easy to navigate, taking into account the intended audience – participants and caregivers;
- Ensure that any marketing materials that include a web address for the PO's website are expected to link directly to the PO's homepage;
- Include all applicable disclaimers (see section 50);
- Ensure that all websites marketing PACE maintain a separate and distinct section on their website for PACE information if the PO markets other lines of business;
- Notify individuals that they will leave the PO's PACE information website if there is a link that will take an individual to non-PACE information or to a different website;
- Review and update website content as needed;
- Note that the status of the website is "pending" until CMS has granted an approval/disapproval (see section 90.2.2). If a portion of the PO's website is disapproved, the disapproved portion must be removed from the website immediately upon notification of the disapproval;
- Clearly label all hyperlinks;
- Include a date stamp on each webpage with the date the page was last updated;

- Include the toll-free customer service number and hours of operation, TTY number, and either a physical or Post Office Box address;
- Include information on participant rights and responsibilities upon disenrollment;
- Provide the PACE Organization's service area;
- Include information that the PACE program will be the participant's sole service provider and that the PACE organization guarantees access to services, but not to a specific provider.
- Provide instructions on how to appoint a representative and a link to the downloadable version of the CMS Appointment of Representative Form (CMS Form-1696); and
- A description of and information on how to file a grievance and an appeal by participants, their family members or representatives. This must include:
    - Phone number(s) for receiving oral requests;
    - Mailing address for written requests;
    - Fax number for written requests;
    - Links, if applicable, to any forms created by the PACE Organization for appeals and grievances; and
    - Contact numbers for participants and/or caregivers to use for process or status questions

  Note: POs should note that there may be additional non-marketing website requirements found in other PACE Manual chapters and HPMS memorandums or emails. Updates to marketing website requirements may also be released through HPMS memoranda or emails.

100.2 – Social Media

42 CFR 460.82(a)(2), 460.82(b), 460.82(e)

POs must submit to HPMS social media (e.g., Facebook, Twitter, YouTube, LinkedIn, Scan Code, or QR Code) posts that meet the definition of marketing materials, specifically those that contain PO-specific benefits, premiums, cost-sharing, or qualification requirements. Both current participants and members of the public should be able to view the required information without having to join a third-party social media website.

Additional guidance on social media has been incorporated into relevant sections of the PMG. For example, see section 40.1 for information on social media and material IDs, and section 40.5 on product endorsements and

testimonials. In addition, even when social media is not specifically mentioned, POs should use the overarching marketing rules outlined in these guidelines for direction.

100.3 – Mobile Applications (Apps)

42 CFR 460.82(a)(2), 460.82(b), 460.82(e)

Mobile apps that provide information to current participants or their family members, or caregivers, about their current enrollment in the PACE Program or provide non-PACE-specific health information do not require submission to HPMS for marketing review. If the app is targeted to prospective participants, it must be submitted in HPMS. POs must also provide CMS access to their mobile apps upon request.

If POs do not provide detailed information about the PACE program, such as cost and qualification requirements in the app, the selection of information must not be misleading. The app must also instruct prospective participants/family members/caregivers where to find complete information.

Appendix 1 - Definitions

Ad-hoc Participant Communications Materials

Ad-hoc participant communications materials are informational materials that are targeted to current participants or a customized/limited subset of participants. They do not include information about the PO's benefit structure. They apply to specific situations or cover participant-specific processes or other operational issues. These materials are not considered marketing materials.

Advertising/Promotional Materials

Advertising/promotional materials are primarily intended to attract or appeal to a prospective participant. Advertising/promotional materials contain less detail than other marketing materials, and may provide benefit information at a level to entice a prospective participant to request additional information.

Alternate Formats

Alternate formats are methods/forms of communication used to convey information to participants with disabilities (e.g., Braille, large print, and audio). Reasonable accommodations for communicating marketing information must be made.

Banner and Banner-Like Advertisements

Banner advertisements are typically used in television ads and flash information quickly across a screen with the sole purpose of enticing a prospective participant to contact the PO to enroll or request more information. A "banner-like" ad is usually in some media other than television, (e.g., outdoor advertising and internet banner ads), and is intended to be very brief and to entice someone to call the PO or to alert someone that information is forthcoming. These types of ads are considered informational and are not considered marketing materials.

Enrollment Materials

Enrollment materials are used to enroll or disenroll a participant from a PO. These materials are used to convey information specific to enrollment and disenrollment issues. Enrollment materials that are used prior to enrollment are considered marketing materials (see Appendix 2).

Health Plan Management System (HPMS)

HPMS is a web-enabled information system that serves a critical role in supporting the implementation and ongoing operations of POs. HPMS and its software modules may be used by POs to enter, track, and maintain marketing materials submitted to CMS for review and approval.

Lock-in Clause

A lock-in clause entails language included in the marketing materials that clearly states that PACE participants may be fully and personally liable for the costs of unauthorized or out-of-PACE program agreement services.

Marketing Materials

Marketing materials are information POs provide to the public about its program. Marketing materials can be used to educate prospective participants. These materials must be approved by CMS and the SAA.

Nominal Value

Nominal value is currently defined by CMS as being worth $15 or less, based on the retail value of the item in question. Any promotional activity or item (i.e., gift) offered by POs, including those that will be used to encourage retention of participants, must be of nominal value.

Note: CMS sets the maximum, not the minimum, for nominal value.

Outdoor Advertising (ODA)

Outdoor advertising is outdoor marketing intended to capture the attention of a passing audience (e.g., billboards, signs attached to transportation vehicles), and to influence them to request more detailed information on the product being advertised.

PACE

PACE means the Program of All-inclusive Care for the Elderly, a managed care Medicare/Medicaid program authorized under sections 1894, 1905(a), and 1934 of the Social Security Act and Chapter 42 of the Code of Federal Regulations, Part 460 (see Appendix 2).

PACE Program Agreement

A PACE program agreement is an agreement among a PO, CMS, and the SAA that contains pertinent policies and procedures of the PO and the SAA, and specific contractual requirements from CMS. A PO may operate in the State only in accordance with a PACE program agreement.

Template Material

A template material is any marketing material that includes placeholders for variable data to be populated at a later time.

Website Address

A website address is an address that is typed into an internet browser, also known as a Universal Resource Locator (URL).

Appendix 2 - Related Laws and Regulations

(Rev. 4, Issued: 08-30-13, Effective: 05-08-13, Implementation: 10-29-13)

Chapter 42 of the Code of Federal Regulations Part 460

The PACE regulations can be found at https://www.gpo.gov/fdsys/granule/CFR-2009-title42-vol4/CFR-2009-title42-vol4-part460

Privacy and Confidentiality

Additional information on the HIPAA Privacy Rule and its disclosure requirements can be found at http://www.hhs.gov/ocr/privacy/

Americans with Disabilities Act

Additional information on the Americans with Disabilities Act can be found at http://www.ada.gov/

Sections 501 and 504 of the Rehabilitation Act

Additional information on sections 501 and 504 of the Rehabilitation Act can be found at
http://www.dol.gov/oasam/regs/statutes/sec504.htm and
http://transition.fcc.gov/cgb/dro/504/disability_primer_1.html

HPMS, Connectivity Guide and User Instructional Guides

Additional information can be found at https://www.hpms.cms.gov

Section 1557 of the Patient Protection and Affordable Care Act

Additional information on Section 1557 of the Patient Protection and Affordable Care Act can be found at http://www.hhs.gov/civil-rights/for-individuals/section-1557/

Section 508 of the Rehabilitation Act

(Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended by the Workforce Investment Act of 1998 (P.L. 105-220), August 7, 1998)
All POs that choose to create and maintain an Internet website must ensure that it is compliant with web-based technology and information standards for people with disabilities as specified in section 508 of the Rehabilitation Act. For additional information, please go to the following website address: http://www.section508.gov

> *Note: These Federal requirements are extended to all POs through the requirements for non-discrimination under Federal grants and programs (29 USC §794).*

Enrollment and Disenrollment

Additional information on Enrollment and Disenrollment can be found in the PACE Manual at http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Internet-Only-Manuals-IOMs-Items/CMS019036.html

Sections 1894, 1905(a) and 1934 of the Social Security Act

Additional information on the Social Security Act can be found at https://www.socialsecurity.gov/OP_Home/ssact/title18/1894.htm; https://www.socialsecurity.gov/OP_Home/ssact/title19/1934.htm and http://www.socialsecurity.gov/OP_Home/ssact/title19/1905.htm

Section 1557 of the Patient Protection and Affordable Care Act

Section 1557 is the nondiscrimination provision of the Affordable Care Act (ACA). The law prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs or activities. Section 1557 builds on long-standing and familiar Federal civil rights laws: Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975. Section 1557 extends nondiscrimination protections to individuals participating in:

- *Any health program or activity any part of which received funding from HHS*
- *Any health program or activity that HHS itself administers*
- *Health Insurance Marketplaces and all plans offered by issuers that participate in those Marketplaces.*

http://www.hhs.gov/civil-rights/for-individuals/section-1557/translated-resources