



CENTER FOR MEDICARE

DATE: April 12, 2018

TO: Medicare Advantage Organizations
Medicare Advantage - Prescription Drug Organizations
Section 1876 Cost Plans
Prescription Drug Plan Sponsors
Employer/Union-Sponsored Group Health Plans
Medicare-Medicaid Plans

FROM: Kathryn A. Coleman, Director
Medicare Drug & Health Plan Contract Administration Group

Amy Larrick Chavez-Valdez, Director
Medicare Drug Benefit and C & D Data Group

SUBJECT: Request for Input on the 2019 Medicare Communications and Marketing Guidelines

The Centers for Medicare & Medicaid Services (CMS) is soliciting feedback on Medicare marketing rules. Traditionally, we release a draft version of the Medicare Marketing Guidelines (MMG) for comment before releasing the final. To meet the timeframes associated with CMS 4182-F (<https://www.federalregister.gov/documents/2018/04/16/2018-07179/medicare-program-contract-year-2019-policy-and-technical-changes-to-medicare-advantage-medicare-cost>), which impacts many policies in the MMG, we are unable to issue a draft for comment. Instead, we are seeking feedback that will be used to draft the renamed Medicare Communications and Marketing Guidelines (MCMG), for release later this year.

To aid reviewers, we have outlined a summary of proposed changes to our existing guidelines and policies, as well as provided a list of specific topics upon which we are seeking comment. Regardless, we welcome comments on all sections of the 2018 MMG, as well as any new guidance that may be needed as a result of CMS 4182-F.

Summary of Proposed Changes

Below are proposed changes to existing policy that we are considering for contract year 2019.

- Clarifying that business reply cards that do not mention plan specific benefits do not need to be submitted into HPMS.
- Removing the restriction on requesting email addresses when asking for referrals from enrollees.
- Allowing Plans/Part D Sponsors to announce that a nominal gift may be offered to enrollees for a referral when soliciting leads.
- Updating the font size rule to only apply to required documents.

- Aligning the delivery date of the EOC with the regulatory requirements for all Plans and Part D Sponsors, including D-SNPs.
- Permitting agents to disseminate contact information at educational events.
- Clarifying that it is not a violation of CMS marketing requirements if contracted providers notify their patients that the contract status between the provider and the Plan/Part D Sponsor is changing.
- Adding definitions to the current Appendix 1 for agents/brokers, and misleading marketing materials, statements, and activities.
- Updating current Appendix 5 to eliminate non-regulatory disclaimers and streamlining others based on consumer testing, such as disclaimers when advertising sales/marketing events, and when using non-benefit/non-health service providing third party materials.
- Consolidating many disclaimers into a pre-enrollment checklist and requiring plans to disseminate the checklist one time with the Summary of Benefits, instead of requiring the disclaimers on multiple marketing materials.

Specific Topics for Consideration

CMS recognizes that relationships within the health care industry are changing, resulting in a higher degree of provider-plan integration. Therefore, CMS is specifically soliciting comments on provider-based activities and whether the flexibility offered is broad enough to support and encourage new delivery methods, as well as co-branding relationships. When commenting, please consider CMS 4182-F and Section 1851(j)(1)(D)(i) of the Social Security Act, which prohibits sales and marketing activities in the health care setting.

CMS is also seeking comments on flexibilities related to Star Ratings (current MMG sections 30.10.1 and 30.10.2) and General Marketing Requirements (current MMG sections 40.3 - 40.5) that enhance plans' ability to market competitively and foster fair comparisons, while making sure beneficiaries have clear and reliable information with which to base their choices. This could include eliminating or revising current requirements and/or restrictions.

The MMG is located at: <https://www.cms.gov/Medicare/Health-Plans/ManagedCareMarketing/FinalPartCMarketingGuidelines.html>. Please click on the following link to access the 2019 MMG comment survey: http://hpms.cms.fu.com/surveys/mmg2018_03/hpms_mmg_start.asp. When providing comments via the survey, if reviewers have comments based on regulatory changes, they should submit them with the current MMG that contain that policy. For instances where there is no existing section that coincides with the new regulatory change, reviewers should submit them via the "Other" category. All comments must be received no later than 5:00 PM (ET), April 26, 2018. Comments received after this date may not be considered.

Thank you in advance for your comments on these proposed changes. Please email questions to Marketing@cms.hhs.gov.