

# Final CY 2016 Marketing Guidance for Virginia Medicare-Medicaid Plans

Issued: July 21, 2015

## Introduction

All Medicare Advantage-Prescription Drug (MA-PD) plan sponsor requirements in the CY 2016 Medicare Marketing Guidelines (MMG), posted at <http://www.cms.gov/Medicare/Health-Plans/ManagedCareMarketing/FinalPartCMarketingGuidelines.html>, apply to Medicare-Medicaid plans (MMPs) participating in the Virginia Capitated Financial Alignment Demonstration, except as noted or modified in this guidance document.<sup>1</sup>

This guidance document provides information only about those sections of the MMG that are not applicable or that would be different for MMPs in Virginia; therefore, this guidance document should be considered an addendum to the CY 2016 MMG. This MMP guidance will be applicable to all marketing done for CY 2016 benefits. The table below summarizes those sections of the CY 2016 MMG that are clarified, modified, or replaced for Virginia MMPs in this guidance.

**Table 1: Summary of Clarifications, Modifications, or Replacements of MMG Guidance**

Medicare Marketing Guidelines (MMG) Section	Change in this Guidance Document
Section 30.5 – Requirements Pertaining to Non-English Speaking Populations	Clarifies the requirements of this section for MMPs.
Section 30.6 – Required Materials with an Enrollment Form	Clarifies that the requirements of this section are not applicable to MMPs.
Section 30.7 – Required Materials for New and Renewing Enrollees at Time of Enrollment and Thereafter	Replaces current guidance in the MMG with new guidance for MMPs.
Section 30.9– Star Ratings Information from CMS	Clarifies that the requirements of this section are not applicable to MMPs.
Section 30.9.1 – Referencing Star Ratings in Marketing Materials	Clarifies that the requirements of this section are not applicable to MMPs.
Section 30.9.2 – Plans with an Overall 5-Star Rating	Clarifies that the requirements of this section are not applicable to MMPs.

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<sup>1</sup> Note that any requirements for Special Needs Plans (SNPs), Private Fee-for-Service (PFFS) plans, Preferred Provider Organizations (PPOs), and Section 1876 Cost-Based Plans (cost plans) in the MMG do not apply unless specifically noted in this guidance.

<b>Medicare Marketing Guidelines (MMG) Section</b>	<b>Change in this Guidance Document</b>
Section 40.6 – Hours of Operation Requirements for Marketing Materials	Adds new requirements for MMPs to current MMG requirements of this section.
Section 40.8 – Marketing of Multiple Lines of Business	Clarifies that organizations offering both MMP and non-MMP products in a service area may not market the non-MMP products in MMP marketing materials.
Section 40.8.3 – Marketing Materials from Third Parties that Provide Non-Benefit/Non-Health Services	Clarifies that the requirements of this section do not apply to materials produced by the State and the State’s enrollment broker.
Section 40.10 – Standardization of Plan Name Type	Clarifies the requirements of this section for MMPs.
Section 50.1 – Federal Contracting Disclaimer	Replaces current disclaimer in this section with a new Federal-State disclaimer for MMPs.
Section 50.2 – Disclaimers When Benefits Are Mentioned	Replaces current disclaimers in this section with new disclaimers for MMPs.
Section 50.3 – Disclaimers When Plan Premiums Are Mentioned	Clarifies that the requirements of this section are not applicable to MMPs.
Section 50.4 – Disclaimer on Availability of Non-English Translations	Replaces current disclaimer in this section with a new disclaimer for MMPs.
Section 50.5 – Disclaimer on SNP Materials	Clarifies that MMPs must include a disclaimer regarding the NCQA approval of their Model of Care and replaces current disclaimer in this section with a new disclaimer for MMPs.
Section 50.6 – Disclaimer When Cost-Sharing is Mentioned on D-SNP Materials Targeting Potential Enrollees	Replaces current disclaimer in this section with a new disclaimer for MMP materials that include Part D benefit information.
Section 50.12 – Disclaimer for Plans Accepting Online Enrollment Requests	Clarifies that the requirements of this section are not applicable to MMPs.
Section 50.13 – Disclaimer When Using Third Party Materials	Replaces current disclaimer in this section with a new disclaimer for MMPs.
Section 50.14 – Disclaimer When Referencing Star Ratings Information	Clarifies that the requirements of this section are not applicable to MMPs.

<b>Medicare Marketing Guidelines (MMG) Section</b>	<b>Change in this Guidance Document</b>
Section 50.15 – Pharmacy/Provider Directory and Formulary Disclaimers	Replaces current disclaimer in this section with a new disclaimer for MMPs.
Section 60.1 – Summary of Benefits (SB)	Replaces current guidance in this section with new guidance for MMPs.
Section 60.2 – ID Card Requirements	Clarifies the requirements of this section for MMPs.
Section 60.4 – Directories	Clarifies the requirements of this section for MMPs.
Section 60.5 – Formulary and Formulary Change Notice Requirements	Clarifies the requirements of this section for MMPs. Extends the requirements for formulary change notifications to Medicaid-covered drugs.
Section 60.7 – Annual Notice of Change (ANOC) and Evidence of Coverage (EOC)	Replaces current guidance in this section with new guidance for MMPs.
Section 60.8 – Other Mid-Year Changes Requiring Enrollee Notification	Extends the requirements of this section to mid-year changes in Medicaid benefits.
Section 70.2 – Marketing of Rewards and Incentives Programs	Clarifies the offering of rewards and incentives to current enrollees by MMPs.
Section 70.5 – Marketing Through Unsolicited Contacts	Clarifies that, in addition to the requirements of this section, Virginia’s enrollment broker’s information should be included on marketing materials under certain circumstances.
Section 70.6 – Telephonic Contact	Clarifies and modifies telephonic requirements for organizations that have MMP and non-MMP products.
Section 70.7 – Outbound Enrollment and Verification Requirements	Clarifies that the requirements of this section are not applicable to MMPs.
Section 70.9.2 – Personal/Individual Marketing Appointments	Clarifies that the requirements of this section do not apply to MMPs.
Section 70.11.5 – Comparative and Descriptive Plan Information Provided by a Non-Benefit/Non-Health Service-Providing Third Party	Clarifies that the requirements of this section vis-à-vis State agencies also apply to the State’s enrollment broker.

Section 80.1 – Customer Service Call Center Requirements	Replaces current guidance in this section regarding permissible use of alternate call center technologies on weekends and holidays with new guidance for MMPs.
Section 80.2 – Requirements for Informational Scripts	Clarifies requirements in this section for MMPs.
Section 90 – The Marketing Review Process	Clarifies that references in this section (and subsections) to CMS in its role in marketing reviews also apply to the State.
Section 90.2.3 – Submission of Multi-Plan Materials	Clarifies that the requirements of this section are not applicable to MMPs.
Section 90.3 – HPMS Material Statuses Section 90.5 – Time Frames for Marketing Review	Clarifies the requirements of these sections with respect to the lack of “deeming” for jointly reviewed materials.
Section 90.6 – File & Use Process	Clarifies the File & Use certification process for MMPs.
Section 90.6.1 – Restriction on the Manual Review of File & Use Eligible Materials	Clarifies that the requirements of this section are not applicable to MMPs.
Section 100.1 – General Website Requirements	Adds new requirements for MMPs to current MMG requirements of this section.
Section 100.2 – Required Content	Adds new requirements for MMPs to current MMG requirements of this section.
Section 100.2.2 – Required Documents for All Plans/Part D Sponsors	Clarifies that the requirements of this section are not applicable to MMPs.
Section 100.3 – Electronic Enrollment	Clarifies that the requirements of this section are not applicable to MMPs.
Section 100.5 – Online Formulary, Utilization Management (UM), and Notice Requirements	Extends the formulary change notice requirements of this section to non-Part D drug formulary changes.
Section 120 – Marketing and Sales Oversight and Responsibilities	Clarifies that the requirements of this section (and subsections) are not applicable to MMPs with respect to independent agents and brokers. Clarifies that MMP staff conducting marketing activity of any kind must be licensed in the State (and, when required, appointed) as an insurance broker/agent.

Section 150 – Use of Medicare Mark for Part D Sponsors	Clarifies the requirements of this section for MMPs.
Section 160.4 – Sending Non-plan and Non-health Information Once Prior Authorization is Received	Replaces current disclaimer in this section with a new disclaimer for MMPs.

In addition, we clarify that all requirements applicable to independent agents/brokers throughout the MMG will be inapplicable to MMPs in Virginia. All MMP enrollment transactions must be processed by Virginia’s enrollment broker, and agents/brokers will not be permitted to submit MMP enrollments. We refer MMPs to the following available model materials. We note that materials created by MMPs should take into account the reading level requirements established in the three-way contract. Available model materials reflect acceptable reading levels. Current Part D models will be acceptable for use as currently provided, and MMPs must add required disclaimers in section 50 of this guidance, as appropriate. Adding required MMP disclaimers to Part D models will not render the documents non-model when submitted for review or accepted as File & Use materials.

- MMP-specific model materials tailored to MMPs in Virginia, including a Summary of Benefits (SB), Annual Notice of Change (ANOC), Evidence of Coverage (EOC) (Member Handbook), comprehensive integrated formulary, combined provider/pharmacy directory, ID card, integrated denial notice, and welcome letter for opt-ins and passively enrolled individuals: <http://cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/FinancialAlignmentInitiative/InformationandGuidanceforPlans.html>.

CY 2016 MMP-specific model materials tailored to MMPs in Virginia will be added to the website and will also be disseminated via the Health Plan Management System (HPMS).

- Required Part D models, including the Part D Explanation of Benefits, Excluded Provider Letter, Prescription Transfer Letter, and Transition Letter: <http://www.cms.gov/Medicare/Prescription-Drug-Coverage/PrescriptionDrugCovContra/Part-D-Model-Marketing-Materials.html>.
- Part D appeals and grievances notices and models (including those in Chapter 18 of the Prescription Drug Benefit Manual): <http://www.cms.gov/Medicare/Appeals-and-Grievances/MedPrescriptDrugApplGriev/Guidance.html> and <http://www.cms.gov/Medicare/Appeals-and-Grievances/MedPrescriptDrugApplGriev/PlanNoticesAndDocuments.html>
- Part C appeals and grievances notices and models (including those in Chapter 13 of the Medicare Managed Care Manual): <http://www.cms.gov/Medicare/Appeals-and-Grievances/MMCAG/Guidance.html> and <http://www.cms.gov/Medicare/Appeals-and-Grievances/MMCAG/Notices.html>.
- ANOC/EOC (Member Handbook) errata model: <http://www.cms.gov/Medicare/Health-Plans/ManagedCareMarketing/MarketngModelsStandardDocumentsandEducationalMaterial.html>. We note that the errata model may be helpful to MMPs in creating their own errata notices

but that terminology in that notice is not specific to MMPs (for example, references to the Evidence of Coverage should also include the MMP Member Handbook) and must be modified accordingly.

- The CMS Multi-Language insert model: <http://www.cms.gov/Medicare/Health-Plans/ManagedCareMarketing/MarketngModelsStandardDocumentsandEducationalMaterial.html>.

Following are the Virginia MMP-specific modifications to the MMG for CY 2016.

### **Section 30.5 – Requirements Pertaining to Non-English Speaking Populations**

The standard articulated in this section for translation of marketing materials into non-English language will be superseded to the extent that Virginia’s standard for translation of marketing materials is more stringent. Guidance regarding the CY 2016 translation requirements will be released later in 2015. To the extent any service area meets either Virginia’s or Medicare’s translation standard, the required materials for translation are the Summary of Benefits (SB), ANOC/EOC (Member Handbook), formulary (List of Covered Drugs), provider/pharmacy directory (Provider and Pharmacy Directory), the notice alerting enrollees how to access or receive the Provider and Pharmacy Directory, notices of appeals decisions, and the Part D transition letter.<sup>2</sup>

### **Section 30.6 – Required Materials with an Enrollment Form**

Because MMPs will be too new to measure under the CMS plan (star) rating system, they will not be required to include the Star Ratings Information document when a beneficiary is provided with any enrollment information. We further clarify that the responsibility for sending enrollment and disenrollment notices to enrollees will be delegated to Virginia’s enrollment broker, with the exception of any notices delegated to MMPs, as described in Appendix 5 of the MMP Enrollment and Disenrollment Guidance.

### **Section 30.7 – Required Materials for New and Renewing Enrollees at Time of Enrollment and Thereafter**

This section is replaced with the following revised guidance:

#### **Section 30.7 – Required Materials for New and Renewing Enrollees at Time of Enrollment and Thereafter**

42 CFR 422.111(c)(1), 423.128(c)(1), 422.2264(a), 423.2264(a)

The following materials must be provided to enrollees at the time of enrollment and annually thereafter:

- ANOC/EOC (Member Handbook), or simply an EOC (Member Handbook), as applicable and described in the replacement guidance below for section 60.7 of the MMG.
- A comprehensive integrated formulary (List of Covered Drugs) that includes Medicare and Medicaid outpatient prescription drugs and over-the-counter pharmacy drugs or products provided under the MMP.

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<sup>2</sup> CMS makes available a Spanish translation of the Part D transition letter to all Medicare health plans at <http://www.cms.gov/Medicare/Prescription-Drug-Coverage/PrescriptionDrugCovContra/Part-D-Model-Marketing-Materials.html>.

- A combined Provider and Pharmacy Directory that includes all providers of Medicare, Medicaid, and additional benefits, or separate notice alerting enrollees how to access or receive the directory (required at the time of enrollment and annually thereafter).
- A single Member ID Card for accessing all covered services under the plan (required at the time of enrollment and as needed or required by the MMP post-enrollment).
- For individuals enrolled through passive enrollment, a demonstration plan-specific SB containing a concise description of the important aspects of enrolling in the plan, as well as the benefits offered under the plan, including co-pays, applicable conditions and limitations, and any other conditions associated with receipt or use of benefits. Because the EOC (Member Handbook) may not be provided until just prior to the effective date of a passive enrollment, the SB must be provided to individuals enrolled through passive enrollment prior to receipt of the EOC (Member Handbook) to ensure that they have sufficient information about plan benefits to make an informed decision prior to the passive enrollment effective date. Refer to the revised guidance for section 60.7 contained in this document for more information about when an MMP must send an SB to current enrollees post-enrollment.

MMPs must send enrollees who self-select into the demonstration the following materials for receipt no later than ten (10) calendar days from receipt of CMS confirmation of enrollment or by the last day of the month prior to the effective date, whichever occurs later. We clarify that this group of enrollees who self-select includes individuals who are eligible for passive enrollment but select a different MMP or initiate an earlier enrollment date than their passive enrollment effective date. For late-month enrollment transactions (those for which CMS confirmation of enrollment is received less than ten (10) calendar days before the end of the month prior to the effective date), MMPs must send enrollees these materials for receipt no later than ten (10) calendar days from receipt of CMS confirmation of enrollment. MMPs should refer to the date of the Daily Transaction Reply Report (DTRR) that has the notification to identify the start of the ten (10) calendar-day timeframe.

- A welcome letter, which must contain 4Rx information, consistent with a model developed jointly by CMS and the State
- A comprehensive integrated formulary (List of Covered Drugs)
- A combined Provider and Pharmacy Directory, or separate notice alerting enrollees how to access or receive the directory, consistent with section 60.4 of the MMG.
- A single Member ID Card
- An EOC (Member Handbook)

MMPs must send enrollees who are passively enrolled the following materials for receipt no later than 30 calendar days prior to the effective date of enrollment:

- A welcome letter, which must contain 4Rx information, consistent with a model developed jointly by CMS and the State
- A comprehensive integrated formulary (List of Covered Drugs)
- A combined Provider and Pharmacy Directory, or separate notice alerting enrollees how to access or receive the directory, consistent with section 60.4 of the MMG.
- An SB

In addition, MMPs must provide enrollees who are passively enrolled an EOC (Member Handbook) and a single Member ID Card for receipt by the end of the month preceding the month the enrollment will take effect (e.g., the Member ID card must be received by a beneficiary by January 31 for a February 1 effective enrollment date).

After the time of initial enrollment for both enrollees who are passively enrolled and enrollees who self-select into the demonstration, the ANOC and EOC (Member Handbook) must also be provided annually consistent with the replacement guidance below for section 60.7 of the MMG.

Additional informational materials related to benefits or plan operations may be included in these required mailings to new and current enrollees – both at the time of enrollment and annually thereafter – consistent with the requirements of section 60.3 of the MMG.

The following tables summarize the requirements of this section.

**Table 2: Required Materials for New Members**

Enrollment Mechanism	Required Materials for New Members	Timing of Beneficiary Receipt
Passive enrollment	<ul style="list-style-type: none"> <li>• Welcome letter</li> <li>• Formulary (List of Covered Drugs)</li> <li>• Provider and Pharmacy Directory (or separate notice alerting enrollees how to access or receive the directory)</li> <li>• SB</li> </ul>	30 calendar days prior to the effective date of enrollment
	<ul style="list-style-type: none"> <li>• Member ID Card</li> <li>• EOC (Member Handbook)</li> </ul>	No later than the day prior to the effective date of enrollment
Self-selected enrollment (with enrollment confirmation received more than 10 calendar days before the end of the month)	<ul style="list-style-type: none"> <li>• Welcome letter</li> <li>• Formulary (List of Covered Drugs)</li> <li>• Provider and Pharmacy Directory (or separate notice alerting enrollees how to access or receive the directory)</li> <li>• Member ID Card</li> <li>• EOC (Member Handbook)</li> </ul>	No later than the last day of the month prior to the effective date
Self-selected enrollment (with enrollment confirmation received less than 10 calendar days before the end of the month)	<ul style="list-style-type: none"> <li>• Welcome letter</li> <li>• Formulary (List of Covered Drugs)</li> <li>• Provider and Pharmacy Directory (or separate notice alerting enrollees how to access or receive the directory)</li> <li>• Member ID Card</li> <li>• EOC (Member Handbook)</li> </ul>	No later than 10 calendar days from receipt of the CMS confirmation of enrollment

**Table 3: Required Materials for Renewing Members**

Required Materials for Renewing Members	Timing of Beneficiary Receipt
<ul style="list-style-type: none"> <li>• ANOC/EOC (Member Handbook)</li> <li>• Formulary (List of Covered Drugs)</li> </ul> <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> <li>• ANOC</li> <li>• SB</li> <li>• Formulary</li> </ul>	September 30
<p>If only the ANOC, SB, and formulary are sent by September 30:</p> <ul style="list-style-type: none"> <li>• EOC (Member Handbook)</li> </ul>	December 31
<ul style="list-style-type: none"> <li>• Member ID Card</li> </ul>	As needed
<ul style="list-style-type: none"> <li>• Provider and Pharmacy Directory (or separate and distinct notification of how to access or receive the directory)</li> </ul>	September 30. The plan website’s directory must be kept up-to-date consistent with section 100.4.

**Section 30.9 – Star Ratings Information from CMS**

Because MMPs will be too new to measure under the CMS plan (star) rating system, this section does not apply to MMPs.

**Section 30.9.1 – Referencing Star Ratings in Marketing Materials**

Because MMPs will be too new to measure under the CMS plan (star) rating system, this section does not apply to MMPs.

**Section 30.9.2 – Plans with an Overall 5-Star Rating**

Because MMPs will be too new to measure under the CMS plan (star) rating system, this section does not apply to MMPs.

**Section 40.6 – Hours of Operation Requirements for Marketing Materials**

In addition to the requirements of this section, MMPs must also provide the phone number and hours of operation information for Virginia’s enrollment broker at least once in any marketing materials that are provided prior to the time of enrollment and where a customer service number is provided for current and prospective enrollees to call.

## **Section 40.8 – Marketing of Multiple Lines of Business**

We clarify that organizations offering both MMPs and non-MMP Medicare health plan options in a service area may only market MMP offerings in their MMP materials.

### **Section 40.8.3 – Marketing Materials from Third Parties that Provide Non-Benefit/Non-Health Services**

In addition to the guidance in this section, CMS and the State clarify that materials produced by the State and distributed by Virginia’s enrollment broker do not constitute non-benefit/non-health service-providing third-party marketing materials. Therefore, such materials do not need to be submitted to the plan for review prior to their use. As indicated in the CMS “Announcement of Calendar Year (CY) 2013 Medicare Advantage Capitation Rates and Medicare Advantage and Part D Payment Policies and Final Call Letter” released on April 2, 2012 and section 20 of the MMG, the CMS MMG do not apply to communications by State governments, and materials created by the State do not need to be reviewed or submitted in HPMS. However, CMS and the State agree to work together in the development of these materials.

### **Section 40.10 – Standardization of Plan Name Type**

As is the case for other Medicare health plans, MMPs are required to include the plan type in each plan’s name using standard terminology consistent with the guidance provided in this section. CMS created the standardized plan type label “Medicare-Medicaid Plan” to refer generically to all plans participating in a Capitated Financial Alignment Demonstration. MMPs must use the “Medicare-Medicaid Plan” plan type terminology following their plan name at least once on the front page or beginning of each marketing piece, consistent with the requirements of section 40.10 of the MMG. Virginia also refers to MMPs as Medicare-Medicaid Plans and has provided additional information about branding for the demonstration.

We also clarify that MMPs in Virginia that offer Medicare Advantage products, including SNPs, in the same service area as their MMPs may not use the same plan marketing name for both those products in order to reduce beneficiary confusion. Thus, for example, an organization offering both a SNP and an MMP in the same service area could not use the same name – e.g., Acme Duals Care (HMO SNP) – for its SNP product as for its MMP product – e.g., Acme Duals Care (Medicare-Medicaid Plan).

### **Section 50.1 – Federal Contracting Disclaimer**

This section is replaced with the following revised guidance:

#### **Section 50.1 – Federal and State Contracting Disclaimer**

42 CFR 422.2264(c), 423.2264(c)

All marketing materials must include the statement that the MMP contracts with both the Federal and the State government. The following statement must be used:

“<Plan’s legal or marketing name> is a health plan that contracts with both Medicare and the Virginia Department of Medical Assistance Services to provide benefits of both programs to enrollees.”

NOTE: In addition to the exceptions noted in the introduction to section 50 of the MMG, radio and television ads do not need to include the Federal and State contracting disclaimer.

### **Section 50.2 – Disclaimers When Benefits Are Mentioned**

This section is replaced with the following revised guidance:

#### **Section 50.2 – Disclaimers When Benefits Are Mentioned**

42 CFR 422.111(a) and (b), 422.2264, 423.128(a) and (b), , 423.2264

The following disclaimers must be used when benefit information is included in marketing materials:

Only for summary documents like the SB: “This is not a complete list. The benefit information is a brief summary, not a complete description of benefits. For more information contact the plan or read the Member Handbook.”

“Limitations [, copays,] and restrictions may apply. For more information, call <plan name> <Member Services> or read the <plan name> Member Handbook.”

“Benefits [and/or copayments] may change on January 1 of each year.”

### **Section 50.3 – Disclaimers When Plan Premiums Are Mentioned**

This section does not apply to MMPs, as MMPs are not permitted to assess plan premiums, and States will pay Medicare Part B premiums on behalf of Medicare-Medicaid enrollees in MMPs.

### **Section 50.4 – Disclaimer on Availability of Non-English Translations**

This section is replaced with the following revised guidance:

#### **Section 50.4 – Disclaimer on Availability of Non-English Translations**

42 CFR 422.2264(e), 423.2264(e)

Plans that meet either: (1) Medicare’s five (5) percent threshold for language translation (refer to section 30.5) or (2) the relevant Medicaid translation standard must place the following alternate language disclaimer on all the required materials identified in section 30.5:

“You can get this information for free in other languages. Call <toll-free number>. The call is free.”

The alternate language disclaimer must be provided in both English and all non-English languages that meet the more stringent of either the Medicare or the Medicaid translation standard. The non-English disclaimer must be placed below the English version and in the same font size as the English version.

NOTE: Member ID Cards are excluded from this requirement. Radio ads are only required to include the disclaimer in the same language as the ad.

### **Section 50.5 – Disclaimer on SNP Materials**

We clarify that the prohibition on discussion of numeric Special Needs Plan (SNP) approval scores in marketing materials or press releases also applies to MMPs. MMPs may only include the following information related to their National Committee for Quality Assurance (NCQA) Model of Care approval:

“<Plan name> has a Model of Care approved by the National Committee for Quality Assurance (NCQA) and the Virginia Department of Medical Assistance Services until <last contract year of NCQA and State approval of Model of Care> based on a review of <plan name>’s Model of Care.”

### **Section 50.6 – Disclaimer When Cost-Sharing is Mentioned on D-SNP Materials Targeting Potential Enrollees**

This section is replaced with the following revised guidance:

#### **Section 50.6 – MMP Materials Including Part D Benefit Information**

42 CFR 422.4(a)(1)(iv), 422.111(b)(2)(iii), 422.2264, 423.2264

The following disclaimer must be on any MMP materials that mention Part D benefits unless the plan charges \$0 copays for all Part D drugs:

“Copays for prescription drugs may vary based on the level of Extra Help you receive. Please contact the plan for more details.”

### **Section 50.12 – Disclaimer for Plans Accepting Online Enrollment Requests**

This section does not apply to MMPs, as the Online Enrollment Center on the Medicare Plan Finder website is not available to MMPs.

### **Section 50.13 – Disclaimer When Using Third Party Materials**

This section applies to MMPs with the following modification to the disclaimer language:

“Neither Medicare nor the Virginia Department of Medical Assistance Services has reviewed or endorsed this information.”

### **Section 50.14 – Disclaimer When Referencing Star Ratings Information**

Because MMPs are too new to measure under the CMS star rating system, this section does not apply to MMPs.

## **Section 50.15 – Pharmacy/Provider Directory and Formulary Disclaimers**

This section is replaced with the following revised guidance:

### **Section 50.15– Section 50.15 – Provider and Pharmacy Directory and Formulary (List of Covered Drugs) Disclaimers**

42 CFR 422.111(a) and (b), 423.128(a) and (b)

The following disclaimer must be included on materials whenever the formulary (List of Covered Drugs) or provider and pharmacy networks are mentioned:

“The List of Covered Drugs and/or pharmacy and provider networks may change throughout the year. We will send you a notice before we make a change that affects you.”

## **Section 60.1 – Summary of Benefits (SB)**

This section is replaced with the following revised guidance:

### **Section 60.1 – Summary of Benefits (SB)**

42 CFR 422.111(b)(2), 423.128(b)(2)

MMPs must use the Summary of Benefits (SB) model document provided by CMS and the State. The SB must contain a concise description of the important aspects of enrolling in the plan, as well as the benefits offered under the plan, including applicable co-pays, applicable conditions and limitations, and any other conditions associated with receipt or use of benefits.

The Multi-Language Insert must be included with the SB.

## **Section 60.2 – ID Card Requirements**

MMPs are required to meet the ID card content requirements in sections 60.2, 60.2.1, and 60.2.2 of the MMG. We clarify, however, that MMPs must issue a single Member ID Card meeting these requirements for all services offered under the plan. Separate pharmacy and health benefits ID cards are not permitted. MMPs must use the model Member ID Card document provided by CMS and the State.

## **Section 60.4 – Directories**

We note that section 60.4 of the MMG contains new flexibilities for all plan types regarding the provision of access to the Provider and Pharmacy Directory, or separate notice alerting enrollees how to access or receive the directory, consistent with flexibilities previously afforded only to MMPs in state-specific marketing guidance. Section 60.4 of the MMG contains detailed requirements regarding this separate notice. In addition, the pharmacy and provider directory requirements in sections 60.4, 60.4.1, 60.4.1.1, and 60.4.2 of the MMG apply to MMPs with the following modifications:

- MMPs are required to make available a single combined Provider and Pharmacy Directory. Separate pharmacy and provider directories are not permitted. However, as provided in section

60.4 of the MMG, plans may print separate directories for PCPs and specialists provided both directories are available to enrollees upon request.

- The single combined Provider and Pharmacy Directory must include all network providers and pharmacies, regardless of whether they provide Medicare, Medicaid, or additional benefits.
- For MMPs with multi-county service areas, the combined Provider and Pharmacy Directory may be provided for all providers by county, provided the directory includes a disclaimer that the directory only includes providers in that particular county (or counties) and that the enrollee may contact the plan's customer service call center to request assistance with locating providers in other counties or to request a complete Provider and Pharmacy Directory.
- MMPs must use the model Provider and Pharmacy Directory document provided to Virginia MMPs by CMS and the State.

### **Section 60.5 – Formulary and Formulary Change Notice Requirements**

The requirements of section 60.5, 60.5.1, 60.5.2, 60.5.3, 60.5.4, 60.5.5, and 60.5.6 of the MMG apply to MMPs with the following modifications:

- MMPs must provide a comprehensive integrated formulary (List of Covered Drugs) that includes Medicare and Medicaid outpatient prescription drugs and over-the-counter pharmacy drugs or products provided under the plan;
- MMPs are only permitted to provide a comprehensive, not abridged, formulary (List of Covered Drugs);
- MMPs must use the model formulary (List of Covered Drugs) document provided by CMS and the State; and
- Formulary change notices must be sent for any negative formulary change (as described in section 30.3.3, "Midyear Formulary Changes," and section 30.3.4, "Provision of Notice Regarding Formulary Changes," of Chapter 6 of the Prescription Drug Benefit Manual), regardless of whether the negative formulary change applies to an item covered under Medicare or Medicaid, or as an additional drug benefit under the plan. Consistent with the guidance in the MMG, this notice must be provided to affected enrollees at least 60 calendar days prior to the change.

### **Section 60.7 – Annual Notice of Change (ANOC) and Evidence of Coverage (EOC)**

This section is replaced with the following revised guidance:

#### **Section 60.7 – Annual Notice of Change (ANOC) and Evidence of Coverage (EOC) (Member Handbook)**

42 CFR 422.111(a)(3), 422.111(d)(2), 423.128(a)(3)

MMPs are required to send an ANOC summarizing all major changes to the plan's covered benefits from one contract year to the next prior to the beginning of the second contract year of the demonstration and annually thereafter. The MMP may send the ANOC and EOC (Member Handbook) as a combined document or separately, as provided below.

MMPs must send the ANOC for member receipt by September 30 each year. The EOC (Member Handbook) may be sent as a standalone document as follows:

- MMPs must send new enrollees (whether they self-select into the demonstration or are passively enrolled) an EOC (Member Handbook) for member receipt by the end of the month preceding the month the enrollment will take effect (e.g., the document must be received by a beneficiary by June 30 for a July 1 effective enrollment date). For late-month enrollment transactions (those for which CMS confirmation of enrollment is received less than ten (10) calendar days before the end of the month prior to the effective date), MMPs must send these materials for receipt no later than ten (10) calendar days from receipt of CMS confirmation of enrollment.
- After the time of initial enrollment, MMPs must annually send an EOC (Member Handbook) for member receipt by December 31. MMPs choosing this option (rather than a combined ANOC/EOC (Member Handbook) by September 30) must also send an SB with the ANOC.

New enrollees with an effective date of October 1, November 1, or December 1 should receive both an EOC (Member Handbook) for the current contract year, as well as a combined ANOC/EOC (Member Handbook) document for the upcoming contract year. We clarify that, for these members, the combined ANOC/EOC (Member Handbook) for the upcoming year, as well as the formulary (List of Covered Drugs), and the Provider and Pharmacy Directory (or separate notice alerting enrollees how to access or receive the directory) for the upcoming year, must be received by one month after the effective date of enrollment, but not later than December 15<sup>th</sup>.

Additional informational materials beyond the materials required to be sent with the ANOC/EOC (Member Handbook) or ANOC and EOC (Member Handbook) may be included with the ANOC, EOC (Member Handbook), or ANOC/EOC (Member Handbook) mailings consistent with the requirements of section 60.3 of the MMG.

To ensure that MMPs are mailing their annual ANOC/EOC (Member Handbook) in a timely manner, plans must indicate the actual mail date and the number of enrollees who were mailed the documents in HPMS within fifteen (15) calendar days of mailing. This includes mail dates for alternate materials. MMPs that mail in waves should enter the actual mail date for each wave. MMPs may enter up to ten waves of mailings. For instructions on meeting this requirement, refer to the *Update Material Link/Function* section of the Marketing Review Users Guide in HPMS.

MMPs must use an errata notice to notify enrollees of any errors in their original mailings. MMPs should work with their Contract Management Team on developing an errata notice when errors are identified.

## **Section 60.8 – Other Mid-Year Changes Requiring Enrollee Notification**

The notification requirements for mid-year Medicare benefit changes described in this section are also applicable to mid-year Medicaid or required demonstration additional benefit changes.

## **Section 70.2 – Marketing of Rewards and Incentives Programs**

MMPs may offer rewards and incentives to current enrollees, as provided in section 70.2 of the MMG, Chapter 4 of the Medicare Managed Care Manual, and CMS' December 4, 2014 HPMS guidance memorandum, "Rewards and Incentives Program Guidance."

## **Section 70.5 – Marketing Through Unsolicited Contacts**

In addition to the requirements of section 70.5, MMPs conducting permitted unsolicited marketing activities such as conventional mail and other print media are required to include the following disclaimer on all materials used for that purpose:

"For information on <plan name> and other options for your health care, call the <enrollment broker name> at 1-855-889-5243 (TTY: 1-800—817-6608), or visit <State enrollment broker website>."

For purposes of this section, enrollment materials sent to passively enrolled individuals are not considered marketing through unsolicited contact.

## **Section 70.6 – Telephonic Contact**

The requirements of section 70.6 of the MMG apply with the following clarifications and modifications:

- MMPs may not call current MMP enrollees to promote other Medicare plan types. Information about other Medicare plan types can only be provided at the proactive request of a current MMP enrollee.
- Consistent with section 70.6 of the MMG, organizations that offer non-MMP and MMP products may call their current non-MMP enrollees (for example, those in Medicaid managed care products), including individuals who have previously opted out of passive enrollment into an MMP, to promote their MMP offerings.
- Calls made by an MMP to a current member of a non-MMP plan offered by the MMP's parent company are not considered unsolicited calls. Plans may use reasonable efforts to contact current non-MMP enrollees who are eligible for MMP enrollment to provide information about their MMP products. Callers with questions about other Medicare program options should be warm transferred to 1-800-Medicare or to the State Health Insurance Assistance Program (known as the Virginia Counseling and Assistance Program, or VICAP, in Virginia) for information and assistance.

## **Section 70.7 – Outbound Enrollment and Verification Requirements**

Since all enrollments into MMPs are submitted by Virginia’s enrollment broker, the requirements of this section do not apply.

## **Section 70.9.2 – Personal/Individual Marketing Appointments**

Since Virginia MMPs are not permitted to market directly to individual potential enrollees, the requirements of this section do not apply.

## **Section 70.11.5 – Comparative and Descriptive Plan Information Provided by a Non-Benefit/Non-Health Service-Providing Third Party**

We clarify that the guidance in this section referring to materials provided by a “State agency” also applies to materials produced by the State and/or distributed by Virginia’s enrollment broker.

## **Section 80.1 – Customer Service Call Center Requirements**

This section is replaced with the following revised guidance:

### **Section 80.1 – Customer Service Call Center Requirements**

42 CFR 422.111(h)(1), 423.128(d)(1)

MMPs must operate a toll-free call center for both current and prospective enrollees seven (7) days a week, at least from 8:00 a.m. to 8:00 p.m. ET, except as provided below. During this time period, current and prospective enrollees must be able to speak with a live customer service representative. MMPs may use alternative technologies on Saturdays, Sundays, and State and Federal holidays in lieu of having live customer service representatives. For example, an MMP may use an interactive voice response (IVR) system or similar technologies to provide the required information listed below, and/or allow a beneficiary to leave a message in a voice mail box. A customer service representative must then return the call in a timely manner, no more than one business day later.

The use of a call center and the provision of information through a call center are mandatory for all MMPs.

Call centers must meet the following operating standards:

- Provide information in response to inquiries outlined in sections 80.2-80.4 of the MMG. If callers are transferred to a third party for provision of the information listed in sections 80.2 and 80.4 of the MMG, all other requirements in section 80.1 apply to the services as performed by the third party.
- Follow an explicitly defined process for handling customer complaints.
- Provide interpreter services to all non-English speaking, limited English-proficient, and hard-of-hearing beneficiaries.

- Inform callers that interpreter services are “free.” Interpreters should be available within 7 minutes of reaching the CSR.
- Provide TTY service to all hearing impaired beneficiaries. CSRs through the TTY service should be available within 7 minutes of the time of answer.
- Limit average hold time to two (2) minutes. The average hold time is defined as the time spent on hold by the caller following the IVR system, touch-tone response system, or recorded greeting and before reaching a live person.
- Answer eighty (80) percent of incoming calls within thirty (30) seconds.
- Limit the disconnect rate of all incoming calls to five (5) percent. A disconnected call is defined as a call that is unexpectedly dropped by the plan while the caller was navigating the IVR or connected with a CSR.

Hold time messages (messages played when an enrollee or prospective enrollee is on hold when calling the plans) that promote the MMP or include benefit information must be submitted in HPMS for review as marketing materials. MMPs are prohibited from using hold time messages to sell other products.

For Pharmacy Technical Help or Coverage Determinations and Appeals Call Center requirements, refer to Appendix 3 in the MMG.

We recommend that MMPs consider using one phone number for all required call center functions. Providing prospective and current enrollees with one telephone number to access all call center functions does not impact the requirements in this guidance document, the MMG, and the three-way contract regarding the hours of operation for each of the required call center functions.

### **Section 80.2 –Informational Scripts**

We clarify that informational calls to plan call centers that become sales/enrollment calls about the MMP at the proactive request of the beneficiary must be transferred to Virginia’s enrollment broker. Plan customer service staff must remain on the telephone with the beneficiary until the transfer is complete.

### **Section 90 – The Marketing Review Process**

Any references in this section, and in all subsections thereunder, to CMS in its role in reviewing marketing materials are also references to the State for purposes of MMP marketing material review.

#### **Section 90.2.3 – Submission of Multi-Plan Materials**

This section does not apply to MMPs.

### **Section 90.3 – HPMS Material Statuses**

We clarify that, for purposes of MMP materials, there is no “deeming” of materials requiring either a dual review by CMS and the State or a one-sided State review, and materials remain in a “pending” status until the State and CMS reviewer dispositions match. Materials that require a CMS-only review deem after the respective 10- or 45-day review period. MMPs may obtain more information about the specific review parameters and timeframes for marketing materials under the Virginia Demonstration in the Marketing Code Look-up functionality in the HPMS marketing module. All other guidance in this section of the MMG and its subsections applies.

### **Section 90.5 – Time Frames for Marketing Review**

We clarify that, for purposes of MMP materials, there is no “deeming” of materials requiring either a dual review by CMS and the State or a one-sided State review, and materials remain in a “pending” status until the State and CMS reviewer dispositions match. Materials that require a CMS-only review deem after the respective 10- or 45-day review period. MMPs may obtain more information about the specific review parameters and timeframes for marketing materials under the Virginia Demonstration in the Marketing Code Look-up functionality in the HPMS marketing module. All other guidance in this section of the MMG and its subsections applies.

### **Section 90.6 – File & Use Process**

We clarify that the File & Use certification for MMPs is included in the three-way contract. All other guidance in section 90.6 of the MMG and all its subsections applies.

#### **Section 90.6.1 – Restriction on the Manual Review of File & Use Eligible Materials**

This section does not apply to MMPs.

### **Section 100.1 – General Website Requirements**

In addition to the requirements of this section, we note that MMPs must post the SB for the upcoming contract year to their website by September 30.

### **Section 100.2 – Required Content**

In addition to the requirements outlined in this section, MMPs must also include a direct link to the State enrollment broker website on their website. MMPs must also include information on the potential for contract termination (i.e., a statement that the MMP may terminate or non-renew its contract, or reduce its service area, and the effect any of those actions may have on MMP enrollees), and information that materials are published in alternate formats (e.g., large print, braille, audio).

#### **Section 100.2.2 – Required Documents for All Plans/Part D Sponsors**

The requirements of this section apply with the following modifications:

- MMPs will not be required to post the LIS Premium Summary Chart as this document will not be applicable to MMPs.

- Because MMPs are too new to measure under the CMS star rating system, MMPs are not required to post a CMS star ratings document on their websites.

### **Section 100.3 – Electronic Enrollment**

This section is not applicable to MMPs. The Online Enrollment Center is not enabled for MMPs, and MMPs are not permitted to directly enroll individuals through a secure Internet website. All enrollments are processed via Virginia’s enrollment broker.

### **Section 100.5 – Online Formulary, Utilization Management (UM), and Notice Requirements**

Formulary change notices applicable to all formulary changes (not just Part D drug changes) must be maintained on MMP websites as required in this section.

### **Section 120 – Marketing and Sales Oversight and Responsibilities**

The provisions in this section of the MMG and all its subsections applicable to independent agents/brokers do not apply to MMPs since the use of independent agents/brokers is not permitted. All MMP enrollments are processed by Virginia’s enrollment broker. We clarify that CMS does not regulate compensation of employed agents.

We also clarify that MMP staff conducting marketing activity of any kind – including marketing events, marketing appointments, and direct comparisons of MMPs and non-MMPs – must be licensed in the State (and, when required, appointed) as an insurance broker/agent.

### **Section 150 – Use of Medicare Mark for Part D Sponsors**

We clarify that MMPs have been required to sign a licensing agreement to use the official Medicare Mark as part of the three-way contract rather than through the HPMS contracting module. All other guidance in section 150 of the MMG and all its subsections applies.

### **Section 160.4 – Sending Non-plan and Non-health Information Once Prior Authorization is Received**

The disclaimer described in this section should be modified as follows:

“Neither Medicare nor the Virginia Department of Medical Assistance Services has reviewed or endorsed this information.”