Final Contract Year (CY) 2018 Marketing Guidance for New York's Medicare-Medicaid Plans

Issued: August 1, 2017

Table of Contents

Introduction

All Medicare Advantage-Prescription Drug (MA-PD) plan sponsor requirements in the Contract Year (CY) 2018 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 New York capitated financial alignment model demonstration – also referred to as Fully-Integrated Duals Advantage (FIDA) Plans – except as noted or modified in this guidance document.[1] Plans are also required to follow all applicable New York State and federal regulations regarding marketing, including 18 CRR-NY 360-10.9 and 42 CFR 438.104. For purposes of this document, we refer to MMPs as FIDA Plans, though we note that CMS uses the term MMP to refer to all plans in all states participating in capitated financial alignment model demonstrations. We also clarify that FIDA Plans may not distribute any marketing materials that require State approval without first obtaining State approval.

This guidance document provides information about those sections of the MMG that are not applicable or that are different for FIDA Plans in New York; therefore, this guidance document should be considered an addendum to the CY 2018 MMG. In addition, this guidance document further clarifies additional marketing rules specific to New York State Medicaid requirements, which apply to the FIDA demonstration. This FIDA Plan guidance is applicable to all marketing done for CY 2018 benefits. The table below summarizes those sections of the CY 2018 MMG that are clarified, modified, or replaced for FIDA Plans 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 10 – Introduction	Specifies requirements for a Marketing Plan.
Section 20 – Materials Not Subject to Marketing Review	Provides one exception to the list of materials not subject to marketing review and submission processes in this section of the MMG.
Section 30.5 – Requirements Pertaining to Non-English Speaking Populations	Clarifies the requirements of this section for FIDA Plans.
Section 30.6 – Required Materials with an Enrollment Form	Clarifies that the requirements of this section are not applicable to FIDA Plans.
Section 30.7 – Required Materials for New and Renewing Enrollees at Time of Enrollment and Thereafter	Replaces current guidance in the MMG with guidance for FIDA Plans.

[1] 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.

Medicare Marketing Guidelines (MMG) Section	Change in this Guidance Document
Section 30.8 – Enrollment Verification Requirements	Clarifies that the requirements of this section are not applicable to FIDA Plans.
Section 30.10 – Star Ratings Information from CMS	Clarifies that the requirements of this section are not applicable to FIDA plans.
Section 30.10.1 – Referencing Star Ratings in Marketing Materials	Clarifies that the requirements of this section are not applicable to FIDA Plans.
Section 30.10.2 – Plans with an Overall 5-Star Rating	Clarifies that the requirements of this section are not applicable to FIDA Plans.
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. Adds a prohibition on the use of materials developed by third parties that provide non-benefit/non-health service materials for FIDA Plans.
Section 40.10 – Standardization of Plan Name Type	Clarifies the requirements of this section for FIDA Plans.
Section 60.1 – Summary of Benefits (SB)	Replaces current guidance in this section with guidance for FIDA Plans.
Section 60.2 – ID Card Requirements	Clarifies the requirements of this section for FIDA Plans.
Section 60.4 – Formulary and Formulary Change Notice Requirements	Clarifies the requirements of this section for FIDA Plans. Extends the requirements for formulary change notifications to Medicaid-covered drugs. Adds an option for FIDA Plans to send a distinct and separate notice alerting Participants how to access or receive the formulary.
Section 60.5 – Part D Explanation of Benefits	Clarifies the requirements of this section for FIDA Plans.
Section 60.6 – Annual Notice of Change (ANOC) and Evidence of Coverage (EOC)	Replaces current guidance in this section with guidance for FIDA Plans.
Section 60.7 – Other Mid-Year Changes Requiring Participant Notification	Extends the requirements of this section to mid-year changes in Medicaid benefits.

Medicare Marketing Guidelines (MMG) Section	Change in this Guidance Document
Section 70.2 – Marketing Through Unsolicited Contacts	Clarifies that, in addition to the requirements of this section, a disclaimer about New York's enrollment broker must be included on unsolicited marketing materials. Reiterates MMG guidance on unsolicited contact. Clarifies that marketing via conventional mail and other print media and marketing of the FIDA Plan to current enrollees is not considered unsolicited direct contact and is therefore permissible.
Section 70.4 - Marketing/Sales Events and Appointments	Adds requirements for FIDA Plans to current MMG requirements of this section.
Section 70.4.2 – Personal/Individual Marketing Appointments	Clarifies the requirements of this section for FIDA Plans.
Section 70.5 – Marketing in the Health Care Setting	Extends the flexibility for facilities to provide an explanatory brochure about contracted FIDA Plans to day care settings and to chronic and psychiatric hospitals.
Section 70.5.4 – 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 alternative call center technologies on weekends and holidays with guidance for FIDA Plans.
Section 80.2 – Informational Scripts	Clarifies requirements in this section for FIDA Plans.
Section 80.3 – Enrollment Scripts/Calls	Clarifies that the requirements of this section are not applicable to FIDA Plans.
Section 80.4.1 – Telephonic Contact	Clarifies and modifies telephonic requirements for organizations that have FIDA Plan and non-FIDA Plan products.
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.

Medicare Marketing Guidelines (MMG) Section	Change in this Guidance Document
Section 90.2.1 – Submission of Non-English and Alternate Format Materials	Clarifies that FIDA Plans have state-specific errata codes.
Section 90.2.3 – Submission of Multi-Plan Materials	Clarifies that the requirements of this section are not applicable to FIDA Plans.
Section 90.3 – HPMS Material Statuses	Clarifies the requirements of this section with respect to the lack of "deeming" for jointly reviewed materials.
Section 90.3.1 – Approved	Adds requirements for FIDA Plans to current MMG requirements of this section.
Section 90.4 – Resubmitting Previously Disapproved Pieces	Adds requirements for FIDA Plans to current MMG requirements of this section.
Section 90.5 – Timeframes for Marketing Review	Clarifies the requirements of this section with respect to the lack of "deeming" for jointly reviewed materials.
Section 90.6 – File & Use Process	Clarifies the File & Use certification process for FIDA Plans.
Section 100.2 – Required Content	Adds requirements for FIDA Plans to current MMG requirements of this section.
Section 100.2.2 – Required Documents for All Plans/Part D Sponsors	Clarifies that some of the requirements of this section are not applicable to FIDA Plans.
Section 100.3 – Electronic Enrollment	Clarifies that the requirements of this section are not applicable to FIDA Plans.
Section 100.4 – 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 110.1 – Promotional Activities	Clarifies the requirements of this section for FIDA Plans.
Section 110.1.1 – Nominal Gifts	Clarifies the requirements of this section for FIDA Plans.
Section 110.2 – Marketing of Rewards and Incentives Programs	Clarifies that the requirements of this section, as well as those in CMS guidance regarding rewards and incentives programs, apply to FIDA Plans.

Medicare Marketing Guidelines (MMG) Section	Change in this Guidance Document
Section 120 – Marketing and Sales Oversight and Responsibilities	Clarifies that the requirements of this section (and subsections) are not applicable to FIDA Plans with respect to independent agents and brokers. Also clarifies that FIDA Plan staff conducting marketing activity of any kind, as defined in Appendix 1 of the MMG, must be licensed in the State (and, when required, appointed) as an insurance broker/agent.
Section 120.6 – Activities That Do Not Require the Use of State-Licensed Marketing Representatives	Clarifies the requirements of this section for FIDA Plans.
Section 150 – Use of Medicare Mark for Part D Sponsors	Clarifies the requirements of this section for FIDA Plans.
Section 160.1 – When Prior Authorization from the Beneficiary is Not Required	Clarifies the requirements of this section for FIDA Plans.
Section 160.4 – Sending Non-plan and Non-health Information Once Prior Authorization is Received	Replaces current disclaimer in this section with a disclaimer for FIDA Plans.
Appendix 5 – Disclaimers	Modifies and clarifies disclaimer requirements for MMPs.

Use of Independent Agents and Brokers

We clarify that all requirements applicable to independent agents/brokers throughout the MMG will be inapplicable to FIDA Plans in New York because the use of independent agents/brokers is not permitted and all FIDA Plan enrollment transactions must be processed by New York's enrollment broker.

Model Materials

We clarify that marketing documents and marketing activities must reasonably accommodate persons with physical or communications-related disabilities, including individuals with cognitive, learning, and psychiatric disabilities. Language related to this requirement is incorporated throughout this guidance.

We note that materials FIDA Plans create should take into account the reading level requirements established in the three-way contract. Available MMP-specific model materials reflect acceptable reading levels. Current Part D models are acceptable for use as currently provided, and FIDA Plans must add required disclaimers in Appendix 5 of this guidance and Appendix 5 of the MMG, as appropriate. Adding required FIDA Plan disclaimers to Part D

models does render the documents non-model when submitted for review or accepted as File & Use materials.

We refer FIDA Plans to the following available model materials:

- FIDA Plan-specific model materials tailored to FIDA Plans in New York, including, but not limited to, an Annual Notice of Change (ANOC); Summary of Benefits; Evidence of Coverage (EOC) (Participant Handbook); comprehensive integrated formulary (List of Covered Drugs); combined Provider and Pharmacy Directory; single Participant ID Card; the integrated coverage determination notice; welcome letters for opt-in and passively enrolled individuals; other plan-delegated enrollment, disenrollment, and appeals notices; and FIDA-specific prescription drug explanation of benefits (EOB), transition notice, prescription transfer notice, and excluded provider notice: http://cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/FinancialAlignmentInitiative/InformationandGuidanceforPlans.html.

- Part D appeals and grievances models (including those in Chapter 18 of the Prescription Drug Benefit Manual): https://www.cms.gov/Medicare/Appeals-and-Grievances/MedPrescriptDrugApplGriev/index.html and https://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.

- MMP-specific ANOC/EOC (Participant Handbook) errata model: https://www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/FinancialAlignmentInitiative/InformationandGuidanceforPlans.html. This MMP errata model, based on the Medicare Advantage errata model, may be helpful to FIDA Plans in creating their own errata notices.

Provider and Pharmacy Directory Requirements

Guidance related to Provider and Pharmacy Directories is no longer included in the MMG and is, instead, available in Chapter 4 of the Medicare Managed Care Manual, the January 17, 2017 HPMS memorandum entitled, “Provider Directory Policy Updates,” Chapter 5 of the Prescription Drug Benefit Manual, and the August 16, 2016 HPMS memorandum entitled “Pharmacy Directories and Disclaimers.” This guidance on general, update, dissemination and timing, online directories, disclaimers, and submissions applies to FIDA Plans with the following modifications:

- FIDA Plans are required to make available a single combined Provider and Pharmacy Directory. Separate pharmacy and provider directories are not permitted.

- The single combined Provider and Pharmacy Directory must include all network providers and pharmacies, regardless of whether they provide Medicare, Medicaid, or additional benefits.

- FIDA Plans must use the model Provider and Pharmacy Directory document provided by CMS and the State. The model will be consistent with directory requirements in the three-way contract. A non-model directory is not permitted.

- For FIDA Plans 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), that a complete directory is available on the plan's website, and that the Participant may contact the plan's customer service call center to request assistance with locating providers in other counties or to request a complete hard copy Provider and Pharmacy Directory.

- FIDA Plans may also provide radial directories to Participants upon request provided that a hard copy of the entire directory is also available upon request.

- The FIDA Plan Provider and Pharmacy Directory is considered a marketing material and must be submitted in the HPMS marketing module. The FIDA Plan may obtain more information about the specific review parameters and timeframes for the Provider and Pharmacy Directory under FIDA capitated financial alignment model demonstration the Marketing Code Look-up functionality in the HPMS marketing module. In addition, we note that the guidance on HPMS submission and material IDs in section 110.2.6 of Chapter 4 of the Medicare Managed Care Manual is modified with respect to the submission of updates and/or addenda pages. FIDA Plans must submit directory updates and/or addenda pages in HPMS, and these documents are reviewed consistent with the parameters for the New York FIDA Plan Provider and Pharmacy Directory marketing code.

Compliance with Section 1557 of the Affordable Care Act of 2010

FIDA Plans are subject to the disclosure requirements under Section 1557 of the Affordable Care Act. For more information, FIDA Plans should refer to https://www.hhs.gov/civil-rights/for-individuals/section-1557/.

Annual Marketing Plan

FIDA Plans will be required to submit an annual marketing plan to CMS and the State for review and approval. More detail about this requirement is provided in section 10 of this document.

Following are the New York FIDA Plan-specific modifications to the MMG for CY 2018.

Section 10 – Introduction

FIDA Plans must submit a plan of FIDA Plan Marketing activities to CMS and NYSDOH that sets forth the terms and conditions and proposed activities of the FIDA Plan dedicated staff during the contract period. The following must be included in the marketing plan:

- A description of materials and formats to be used;
- Distribution methods;
- Primary types of marketing locations (such as, but not limited to, senior centers, nursing facilities, health fairs, etc.); and
- A listing of the kinds of community service events the FIDA Plan anticipates sponsoring and/or participating in during which it will provide information and/or distribute FIDA Plan marketing materials.

An approved annual marketing plan must be on file with NYSDOH for its contracted service area prior to the FIDA Plan engaging in the FIDA Plan-specific marketing activities. The marketing plan may be submitted anytime following the issuance of this guidance but no later than September 30, 2017. The marketing plan must include: 1) stated marketing goals and strategies; 2) a description of marketing activities, and the training, development and responsibilities of dedicated marketing staff; 3) a staffing plan, including personnel qualifications, training content and compensation methodology and levels; 4) a description of the FIDA Plan's monitoring activities to ensure compliance with this section; and 5) identification of the primary marketing locations at which marketing will be conducted. The FIDA Plan must describe how it will meet the informational needs related to marketing for the physical and cultural diversity of its potential membership. This includes, but is not limited to, a description of the FIDA Plan's other-than-English language provisions; interpreter services; and alternate communication mechanisms, including sign language, braille, audio tapes, and/or use of Telecommunications Devices for the Deaf (TDD) services. The FIDA Plan must describe measures for monitoring and enforcing compliance with these guidelines by its marketing representatives including the prohibition of door-to-door solicitation and unsolicited telephonic or electronic contact; a description of the development of pre-enrollee mailing lists that maintains client confidentiality and honors the client's express request for direct contact by the FIDA Plan; and a description of the training, compensation and supervision of its FIDA Plan dedicated marketing representatives.

We note that FIDA Plans will still be required to submit marketing events in HPMS as provided in section 70.9.1 of the MMG. We also note that providers may not provide mailing lists of their patients to FIDA Plans. FIDA Plans may also not require providers to distribute Plan-prepared communications to their patients.

Section 20 – Materials Not Subject to Marketing Review

The requirements of section 20 of the MMG apply to FIDA Plans with the following modification:

- The FIDA Plan Provider and Pharmacy Directory is considered a marketing material and must be submitted in the HPMS marketing module. FIDA Plans may obtain more information about the specific review parameters and timeframes for the Provider and

Pharmacy Directory under the New York FIDA capitated financial alignment model demonstration in the Marketing Code Look-up functionality in the HPMS marketing module.

Section 30.5 – Requirements Pertaining to Non-English Speaking Populations

The standard articulated in this section for translation of marketing materials into non-English languages will be superseded to the extent that New York's standard for translation of marketing materials is more stringent. The New York translation standard – which requires translation of materials into a language that is the primary language of at least five (5) percent of the FIDA Plan's enrolled population or fifty (50) Participants, whichever is less – exceeds the Medicare standard for translation in New York FIDA Plan service areas. Guidance on the translation requirements for all plans, including FIDA Plans, is released via HPMS annually each fall. Required languages for translation for the MMPs are also updated annually, as needed, in the HPMS Marketing Module.

At a minimum, for CY 2018, it is our expectation that FIDA Plans will continue to meet the Medicare standard for translation of required marketing materials into Spanish in all service areas. Required materials are the Summary of Benefits (SB), ANOC/EOC (Participant Handbook), formulary (List of Covered Drugs), Provider and Pharmacy Directory, the distinct and separate notification providing information about accessing the Provider and Pharmacy Directory described in section 30.7 of this guidance and section 60.4 of the MMG, the Integrated Coverage Determination Notice, and the Part D transition letter.[2]

In addition, FIDA Plans must translate ad hoc enrollee communication materials regarding payments and reimbursements in accordance with the standard described above. We note that ad hoc enrollee communication materials are not considered marketing materials and are not submitted in HPMS for marketing review.

FIDA Plans must have a process to simply describe how they will request a Participant's preferred language and/or format for receiving the materials identified in this section and will keep the information as a standing request for future mailings and communications. FIDA Plans must also describe how a Participant can change a standing request for preferred language and/or format. Standing requests pertain to alternate formats and all non-English languages identified in this section and in the HPMS Marketing Module.

Final populated translations of all marketing materials must be submitted in HPMS (see section 90.2 of the MMG) for more information about the material submission process).

For additional information regarding notice and tagline requirements, please refer to Appendix A and B to Part 92 of Section 1557 of the Patient Protection and Affordable Care Act.

[2] CMS will make available Spanish translations of the New York FIDA Plan Summary of Benefits (SB), formulary (List of Covered Drugs), Provider and Pharmacy Network Directory, and ANOC/EOC (Participant Handbook). These are posted at https://www.cms.gov/Medicare/Prescription-Drug-Coverage/PrescriptionDrugCovContra/Part-D-Model-Marketing-Materials.html.

Section 30.6 – Required Materials with an Enrollment Form

Because the Medicare-Medicaid Coordination Office (MMCO) is in the process of developing a Star Ratings system for MMP performance, FIDA Plans will not be subject to the Star Ratings requirements in the MMG. Therefore, FIDA Plans will not be required to include the Star Ratings Information document when a Participant is provided with pre-enrollment information.

Except for some involuntary disenrollment notices, we further clarify that the responsibility for sending enrollment and disenrollment notices to Participants will be delegated to New York's enrollment broker for all demonstration service areas, with the exception of any notices delegated to FIDA Plans as described in Appendix 5 of the MMP Enrollment and Disenrollment Guidance (see https://www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/FinancialAlignmentInitiative/InformationandGuidanceforPlans.html).

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 Participants 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 Participants at the time of enrollment and annually thereafter:
>
> - Welcome Letter (at the time of enrollment)
> - ANOC/EOC (Participant Handbook), or a standalone EOC (Participant Handbook), as applicable and described in the replacement guidance for section 60.6 of the MMG contained in this document.
> - 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 FIDA Plan, or a distinct and separate notice alerting enrollees how to access or receive the formulary (List of Covered Drugs.
> - A combined Provider and Pharmacy Directory that includes all providers of Medicare, Medicaid, and additional benefits, or a distinct and separate notice alerting enrollees how to access or receive the directory (required at the time of enrollment and annually thereafter).
> - A single Participant Identification (ID) Card for accessing all covered services under the plan (required at the time of enrollment and as needed or required by the FIDA Plan 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 copays, applicable conditions and limitations, and any other conditions associated with receipt or use of benefits. Because the EOC (Participant 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 (Participant 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 60.6 of the MMG contained in this document for more information about when an SB must be received by current FIDA Plan Participants post-enrollment.

FIDA Plans must send Participants who opt in to the demonstration the following materials for receipt no later than eight (8) calendar days from receipt of 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 Participants who opt in includes individuals who are eligible for passive enrollment but select a different FIDA Plan or initiate an earlier enrollment date than their passive enrollment effective date. For late-month enrollment transactions (those for which confirmation of enrollment is received less than eight (8) calendar days before the end of the month prior to the effective date), FIDA Plans must send these materials for Participant receipt no later than eight (8) calendar days from receipt of confirmation of enrollment. FIDA Plans should refer to the date of the Enrollment E-file to identify the start of the eight (8) 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), or a distinct and separate notice alerting enrollees how to access or receive the formulary (List of Covered Drugs)

- A combined Provider and Pharmacy Directory, or a distinct and separate notice alerting enrollees how to access or receive the directory, consistent with the requirements in Chapter 4 of the Medicare Managed Care Manual

- An EOC (Participant Handbook)

- A single Participant ID Card

FIDA Plans must send the following materials for receipt by Participants who are passively enrolled 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), or a distinct and separate notice alerting enrollees how to access or receive the formulary (List of Covered Drugs)

- A combined Provider and Pharmacy Directory, or a distinct and separate notice alerting enrollees how to access or receive the directory, consistent with the requirements in Chapter 4 of the Medicare Managed Care Manual

- An SB

In addition, FIDA Plans must send Participants who are passively enrolled an EOC (Participant Handbook) and a single Participant ID Card for receipt by the end of the month preceding the month the enrollment will take effect (e.g., the Participant ID Card and EOC (Participant Handbook) must be received by a Participant by January 31 for a February 1 effective enrollment date).

After the time of initial enrollment, for both Participants who are passively enrolled and Participants who opt in to the demonstration, the ANOC and EOC (Participant Handbook) must also be received annually consistent with the replacement guidance for section 60.6 of the MMG contained in this document.

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 Participants

Enrollment Mechanism	**Required Materials for New Participants**	**Timing of Participant Receipt**
Passive Enrollment	• Welcome letter • Formulary (List of Covered Drugs) (or a distinct and separate notice alerting enrollees how to access or receive the formulary) • Provider and Pharmacy Directory (or a distinct and separate notice alerting enrollees how to access or receive the directory) • SB •	30 calendar days prior to the effective date of enrollment

Enrollment Mechanism	Required Materials for New Participants	Timing of Participant Receipt
Passive Enrollment	• Participant ID Card • EOC (Participant Handbook)	No later than the day prior to the effective date of enrollment
Opt-in enrollment (with enrollment confirmation received more than 8 calendar days before the end of the month)	• Welcome letter • Formulary (List of Covered Drugs) (or a distinct and separate notice alerting enrollees how to access or receive the formulary) • Provider and Pharmacy Directory (or a distinct and separate notice alerting enrollees how to access or receive the directory) • Participant ID Card • EOC (Participant Handbook)	No later than the last day of the month prior to the effective date of enrollment
Opt-in enrollment (with enrollment confirmation received less than 8 calendar days before the end of the month)	• Welcome letter • Formulary (List of Covered Drugs) (or a distinct and separate notice alerting enrollees how to access or receive the formulary) • Provider and Pharmacy Directory (or a distinct and separate notice alerting enrollees how to access or receive the directory) • Participant ID Card • EOC (Participant Handbook)	No later than 8 calendar days from receipt of the confirmation of enrollment

Table 3: Required Materials for Renewing Participants

Required Materials for Renewing Participants	Timing of Participant Receipt
• ANOC/EOC (Participant Handbook) • Formulary (List of Covered Drugs) or a distinct and separate notice alerting enrollees how to access or receive the formulary) OR • ANOC • SB • Formulary (List of Covered Drugs) or a distinct and separate notice alerting enrollees how to access or receive the formulary)	September 30 The ANOC, SB, and List of Covered Drugs (Formulary) must be posted on plan websites by September 30. The EOC (Participant Handbook) must only be posted by September 30 if it is sent with the ANOC.
If only the ANOC, SB, and formulary (List of Covered Drugs) are sent by September 30: • EOC (Participant Handbook)	December 31 The EOC (Participant Handbook) must be posted on plan websites by December 31. The ANOC, SB, and formulary (List of Covered Drugs) must still be posted by September 30.
Participant ID Card	As needed
Provider and Pharmacy Directory (or a distinct and separate notice alerting enrollees how to access or receive the directory)	September 30. The plan website's directory must be kept up-to-date consistent with Chapter 4 of the Medicare Managed Care Manual. The Provider and Pharmacy Directory must be posted on plan websites by September 30.

Section 30.8 – Enrollment Verification Requirements

Since all enrollments into FIDA Plans are submitted by the State's enrollment broker, the requirements of this section do not apply.

Section 30.10 – Star Ratings Information from CMS

Because MMCO is in the process of developing a Star Ratings system for MMP performance, FIDA Plans will not be subject to the Star Ratings requirements in the MMG. Therefore, this section does not apply to FIDA Plans.

Section 30.10.1 – Referencing Star Ratings in Marketing Materials

Because MMCO is in the process of developing a Star Ratings system for MMP performance, FIDA Plans will not be subject to the Star Ratings requirements in the MMG. Therefore, this section does not apply to FIDA Plans.

Section 30.10.2 – Plans with an Overall 5-Star Rating

Because MMCO is in the process of developing a Star Ratings system for MMP performance, FIDA Plans will not be subject to the Star Ratings requirements in the MMG. Therefore, this section does not apply to FIDA Plans.

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

In addition to the guidance in this section, we clarify that materials produced by the State and/or New York'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 sponsor for review prior to their use. As indicated in section 20 of the MMG, the 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, FIDA Plans 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 model demonstration. FIDA Plans 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, excluding envelopes, consistent with the requirements of section 40.10 of the MMG. In addition, New York requires each plan to use the term "Fully-Integrated Duals Advantage" (FIDA) Plan to refer to any FIDA Plan operating in New York. Thus, we clarify that FIDA Plans must only use the CMS standardized plan type "(Medicare-Medicaid Plan)" following their plan name once in their materials but can then use the FIDA Plan terminology thereafter.

In addition, the State also expects FIDA Plans to use the term FIDA in their plan name, as entered in HPMS and included in their marketing materials. For example, a FIDA Plan in New York would use "Acme Duals FIDA Plan" as its plan marketing name in all Participant materials.

In addition, we clarify that FIDA Plans in New York that offer Medicare Advantage products, including SNPs, in the same service area as their FIDA Plans, may not use the same plan marketing name for both those products, so as to prevent Participant confusion. Thus, for example, an organization offering both a SNP and a FIDA Plan 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 FIDA Plan product – e.g., Acme Duals Care FIDA Plan (Medicare-Medicaid Plan).

Section 60.1 – Summary of Benefits (SB)

This section is replaced with the following revised guidance. We also note that Appendix 4 of the MMG does not apply to FIDA Plans.

> **Section 60.1 – Summary of Benefits (SB)**
>
> 42 CFR 422.111(b)(2) 423.128(b)(2)
>
> FIDA Plans must use the SB model document provided by CMS and the State. A non-model SB is not permitted. 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 copays, applicable conditions and limitations, and any other conditions associated with receipt or use of benefits. The SB must be sent in other languages, as required in section 30.5, if the Participant's primary language is known to be one of those languages.

Section 60.2 – ID Card Requirements

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

Section 60.4 – Formulary and Formulary Change Notice Requirements

The requirements of section 60.4, 60.4.1, 60.4.2, 60.4.3, 60.4.4, 60.4.5, and 60.4.6 of the MMG apply to FIDA Plans with the following modifications:

- FIDA Plans must make available a comprehensive integrated formulary (List of Covered Drugs) that includes Medicare and Medicaid outpatient prescription drugs and pharmacy products provided under the plan;

- FIDA Plans are only permitted to make available a comprehensive, not abridged, formulary (List of Covered Drugs)

- FIDA Plans must use the model formulary (List of Covered Drugs) document provided to New York FIDA Plans by CMS and the State (a non-model formulary (List of Covered Drugs) is not permitted); 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 Participants at least 60 calendar days prior to the change.

- When a FIDA Plan removes a drug from the formulary (List of Covered Drugs) for safety reasons, the FIDA Plan not only must notify affected Participants in writing but also must call to notify affected Participants about the change.

We note that the new flexibility available to all Part D sponsors in section 60.4 of the MMG to send either a hard copy formulary (List of Covered Drugs) or a distinct and separate notice (in hard copy) describing where enrollees can find the formulary (List of Covered Drugs) online and how enrollees can request a hard copy formulary also applies to New York FIDA Plans starting with CY 2018. FIDA Plans should refer to section 60.4 of the MMG for additional detail about these requirements.

Section 60.5 – Part D Explanation of Benefits

FIDA Plans are required to meet the Part D Explanation of Benefits (EOB) requirements in section 60.5 of the MMG. We clarify, however, that FIDA Plans must meet this requirement by using the FIDA-specific Drug-Only EOB model provided by CMS and the State.

Section 60.6 – Annual Notice of Change (ANOC) and Evidence of Coverage (EOC)
This section is replaced with the following revised guidance:

> **Section 60.6 – Annual Notice of Change (ANOC) and Evidence of Coverage (EOC) (Participant Handbook)**
>
> 42 CFR 417.427, 422.111(a)(3), 422.111(d)(2), 423.128(a)(3)
>
> FIDA Plans 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 FIDA Plan may send the ANOC and EOC (Participant Handbook) as a combined document or separately, as provided below.
>
> FIDA Plans must send the ANOC for Participant receipt by September 30 each year. The EOC (Participant Handbook) may be sent as a standalone document as follows:
>
> - FIDA Plans must send new Participants (whether they opt in to the demonstration or are passively enrolled) an EOC (Participant Handbook) for Participant receipt by the end of the month preceding the month the enrollment will take effect (e.g., the document must be received by a Participant by June 30 for a July 1 effective enrollment date). For late-month enrollment transactions (those for which confirmation of enrollment is received less than eight (8) calendar days before the end of the month prior to the effective date), FIDA Plans must send these materials for Participant receipt no later than eight (8) calendar days from receipt of confirmation of enrollment. FIDA Plans should refer to the date of the Enrollment E-file to identify the start of the eight (8) calendar-day timeframe.
>
> - After the time of initial enrollment, FIDA Plans must annually send an EOC (Participant Handbook) for Participant receipt by December 31. FIDA Plans choosing this option (rather than a combined ANOC/EOC (Participant Handbook) by September 30) must also send an SB with the ANOC.

New Participants with an effective date of October 1, November 1, or December 1 should receive both an EOC (Participant Handbook) for the current contract year, as well as a combined ANOC/EOC (Participant Handbook) document for the upcoming contract year. We clarify that, for these Participants, the combined ANOC/EOC (Participant Handbook) for the upcoming year, as well as the formulary (List of Covered Drugs) (or a distinct and separate notice alerting enrollees how to access or receive the formulary), and Provider and Pharmacy Directory (or a distinct and 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 15th.

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

We remind FIDA Plans that they must upload in HPMS either (1) a standalone ANOC and a standalone EOC (Participant Handbook), or (2) a combined ANOC/EOC (Participant Handbook). FIDA Plans should only use the combined ANOC/EOC (Participant Handbook) material code if they are sending Participants a combined document. Otherwise, FIDA Plans should use both the standalone EOC and the standalone ANOC codes. Submitting materials under both standalone and combined ANOC/EOC (Participant Handbook) codes will impact CMS' ANOC and EOC (Participant Handbook) timeliness and accuracy monitoring efforts and may subject FIDA Plans to compliance action.

To ensure timely mailing of their annual ANOC/EOC (Participant Handbook), FIDA Plans must indicate the actual mail date (AMD) and the number of Participants who were mailed the documents in HPMS within fifteen (15) calendar days of mailing. This includes mail dates for alternate materials. We remind FIDA Plans that they should enter AMD information in HPMS for mailings to current Participants only. FIDA Plans should not enter AMD information for October 1, November 1, or December 1 effective dates, or for January 1 effective dates for new Participants. FIDA Plans that mail in waves should enter the AMD for each wave. FIDA Plans may enter up to ten waves of mailings. FIDA Plans that use a standalone ANOC and a standalone EOC (Participant Handbook) must enter AMD information for one to ten mailing waves, as applicable, separately for both materials. FIDA Plans that use a combined ANOC/EOC (Participant Handbook) should enter AMD information for one to ten mailing waves, as applicable, only for the combined ANOC/EOC. For instructions on meeting this requirement, refer to the *Update AMD/Beneficiary Link/Function* section of the Marketing Review Users Guide in HPMS.

Note: For a single mailing to multiple recipients, as allowed under section 30.7.1 of the MMG, FIDA Plans should enter an AMD that reflects the number of recipients, not the number of ANOC/EOCs (Participant Handbooks) mailed.

FIDA Plans must use an errata notice to notify Participants of certain errors in their original mailings. We clarify that errata notices should only be used to notify enrollees of plan errors in plan materials. Any mid-year changes, including but not limited to mid-year legislative benefit additions or removals and changes in enrollment policies, should be communicated to current Participants consistent with section 60.7 of this guidance and

section 60.7 of the MMG. The HPMS errata submission process should not be used for mid-year changes to materials that are not due to plan error.

Section 60.7 – Other Mid-Year Changes Requiring Participant 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 affecting FIDA Plans.

Section 70.2 – Marketing Through Unsolicited Contacts

Section 70.2 of the MMG provides examples of unsolicited direct contact with current and prospective enrollees. We reiterate that marketing via conventional mail and other print media (e.g., advertisements, direct mail) is not considered unsolicited contact and is therefore permissible. We also clarify, both here and in section 80.4.1 of this guidance, that marketing of FIDA Plans to current enrollees (including those enrolled in other product lines such as its Medicaid managed care product) is not considered unsolicited direct contact and is therefore permissible.

We clarify that, under the MMG, FIDA Plans are already permitted to send direct mail about the FIDA Plan to enrollees who have opted out, regardless of whether they remain members of other non-FIDA products once they opt out of the FIDA Plan.

Section 70.4 - Marketing/Sales Events and Appointments

In addition to requirements in this section of the MMG, the FIDA Plan must convene all educational and marketing events at sites within the plan's service area that are physically accessible to all Participants or potential FIDA Plan Participants, including persons with disabilities and persons using public transportation.

Section 70.4.2 – Personal/Individual Marketing Appointments

Since New York FIDA Plans are not allowed to market directly to individual potential FIDA Plan Participants, one-one-one appointments with potential FIDA Plan Participants are generally not permitted. We clarify, however, that if a current FIDA or non-FIDA Plan Participant of the organization proactively requests a one-on-one appointment and the FIDA Plan has a documented incoming request for the one-on-one appointment, the FIDA Plan may meet with the Participant subject to the requirements of sections 70.5.2 and 70.5.3 of the MMG.

We clarify that home and other one-on-one visits by non-sales plan employees for purposes related to care coordination are not considered individual marketing appointments. We note that such individuals should never conduct marketing activity, as defined in Appendix 1 of the MMG, but we clarify that non-sales plan employees may provide factual information about the benefits and products offered by FIDA Plans if individuals request it in the course of care coordination activities.

Section 70.5 – Marketing in the Health Care Setting

In addition to the requirements of this section, we clarify that staff in health care settings such as, but not limited to, long-term care facilities, day care settings, and chronic and psychiatric hospitals for FIDA Plan-eligible individuals (post-stabilization) may provide residents meeting

FIDA Plan eligibility criteria with an explanatory brochure for each FIDA Plan with which the facility contracts.

Section 70.5.4 – 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 and/or distributed by New York'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)
>
> FIDA Plans must operate a toll-free call center for both current and potential FIDA Plan Participants 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 potential FIDA Plan Participants must be able to speak with a live customer service representative. FIDA Plans may use alternative technologies on Saturdays, Sundays, and Federal holidays (except New Year's Day) in lieu of having live customer service representatives. For example, a FIDA Plan may use an interactive voice response (IVR) system or similar technologies to provide the required information listed below, and/or allow a Participant 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 this section apply to the services as performed by the third party.
>
> - Follow an explicitly defined process for handling customer complaints.
>
> - Provide interpreter service to all non-English speaking, limited English proficient and hearing impaired Participants.
>
> - Inform callers that interpreter services are "free." Interpreters should be available within eight (8) minutes of reaching the CSR.
>
> - At a minimum, provide TTY service to all hard-of-hearing Participants but also provide the technological equivalent, such as texting or video-conferencing. CSRs through the TTY service should be available within seven (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 FIDA Plan.

Hold time messages (messages played when a Participant or prospective Participant is on hold when calling the plans) that promote the FIDA Plan or include benefit information must be submitted in HPMS for review as marketing materials (see section 90.2 of the MMG for more information about the material submission process). FIDA Plans 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.

Section 80.2 – Informational Scripts

We clarify that informational calls to plan call centers that become marketing discussions, per the definition of marketing in Appendix 1 of the MMG, may be conducted by plan staff provided such staff complies with the licensure requirements for marketing activity in section 120 of this guidance and the MMG. Calls that become enrollment requests must be transferred to New York's enrollment broker. Prior to transferring an informational call to New York's enrollment broker, the Participant must be informed he/she is being transferred. The FIDA Plan representative may remain on the line during the call to the enrollment broker for enrollment calls.

We also clarify that FIDA Plans may not ask callers if they would like to receive information about other Medicare lines of business they offer. Such information may only be provided at the proactive request of a Participant.

FIDA Plans should refer to section 120.6 of this guidance, as well as section 120.6 of the MMG, for clarification of the types of activities conducted by a plan customer service representative that do not require the use of State-licensed marketing representatives. FIDA Plans must use a State-licensed (and, when required, appointed) marketing agent for any activity that meets the definition of marketing in Appendix 1 of the MMG.

Section 80.3 – Enrollment Scripts/Calls

This section does not apply to MMPs because enrollment requests must be transferred to New York's enrollment broker.

Section 80.4.1 – Telephonic Contact

The requirements of section 80.4.1 of the MMG apply with the following clarifications and modifications:

- FIDA Plans may not call current FIDA Plan Participants to promote other Medicare plan types. Information about other Medicare plan types can only be provided at the proactive request of a current FIDA Plan Participant.

- Consistent with section 80.4.1 of the MMG, calls made by FIDA Plans to current Participants (including those enrolled in other product lines) are not considered unsolicited direct contact and are therefore permissible. Organizations offering FIDA Plans may call current non-FIDA Plan (e.g., managed long term care plan, Medicare Advantage plan) Participants, including individuals who have previously opted out of enrollment into a FIDA Plan, to promote the FIDA Plan.

- Plans may use reasonable efforts to contact current non-FIDA Plan Participants who are eligible for FIDA enrollment to provide information about their FIDA 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 (e.g., Health Insurance Information, Counseling, and Assistance, or HICAP) for information and assistance.

Section 90 – The Marketing Review Process

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

Section 90.2.1 – Submission of Non-English and Alternate Format Materials

The requirements of this section apply without modification. We note, however, that FIDA Plans should use state-specific FIDA Plan errata codes. For more information about errata codes, FIDA Plans should consult the Marketing Code Look-up functionality in the HPMS marketing module.

Section 90.2.3 – Submission of Multi-Plan Materials

This section does not apply to FIDA Plans.

Section 90.3 – HPMS Material Statuses

We clarify that, for purposes of FIDA Plan 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 in a "pending" status are not approved for use in the market. However, CMS and State marketing reviewers have standard operating procedures for ensuring materials are reviewed in a timely manner and differences in dispositions are resolved expeditiously. Materials that require a CMS-only review deem after the respective 10- or 45-day review period. FIDA Plans may obtain more information about the specific review parameters and timeframes for marketing materials under the New York FIDA capitated financial alignment model 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 90.3.1 – Approved

In addition to the guidance in this section, the FIDA Plan submitting modifications to a previously approved marketing material must submit a cover document that precisely lists all proposed wording changes to the previously approved marketing material. This will expedite the review and approval process.

Section 90.4 – Resubmitting Previously Disapproved Pieces

In addition to the requirements of this section, and in order to expedite the re-review and approval process, FIDA Plans resubmitting previously disapproved pieces must submit a cover document that precisely lists all proposed wording changes to the previously disapproved materials.

Section 90.5 – Timeframes for Marketing Review

We clarify that, for purposes of FIDA Plan materials, there will be no "deeming" of materials requiring either a dual review by CMS and the State or a one-sided State review, and materials will remain in a "pending" status until the State and CMS reviewer dispositions match. Materials in a "pending" status are not approved for use in the market. However, CMS and State marketing reviewers will have standard operating procedures for ensuring materials are reviewed in a timely manner and differences in dispositions are resolved expeditiously. Materials that require a CMS-only review will deem after the respective 10- or 45-day review period. FIDA Plans may obtain more information about the specific review parameters and timeframes for marketing materials under the New York FIDA capitated financial alignment model 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 the MMP is included in the three-way contract. All other guidance in section 90.6 of the MMG and all its subsections applies.

Section 100.2 – Required Content

In addition to the requirements outlined in this section, FIDA Plans must also include on their websites a direct link to the State's enrollment broker. FIDA Plans must also include information on the potential for contract termination (as required under 42 CFR 422.111(f)(4)), and information that materials are published in alternate formats (e.g., large print, braille, audio). As provided in Appendix 2 of the MMG, plan websites must be 508 compliant, and FIDA Plans must attest that they comply with all applicable requirements when they submit their websites for review in HPMS.

FIDA Plans must also include a disclaimer, as provided in Appendix 5 of this guidance, on all marketing materials and on their website specifying the availability of the Participant Ombudsman to provide Participants with free assistance in handling any issues relating to accessing services. FIDA Plans must include the toll-free number and the website for the Participant Ombudsman.

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

The requirements of this section apply with the following modifications:

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

- Because MMCO is in the process of developing a Star Ratings system for MMP performance, FIDA Plans will not be subject to the Star Ratings requirements in the MMG. Therefore, FIDA Plans will not be required to post a CMS Star Ratings document on their websites.

Section 100.3 – Electronic Enrollment

This section is not applicable to FIDA Plans. The Online Enrollment Center will not be enabled for FIDA Plans, and FIDA Plans will not be permitted to directly enroll individuals through a secure Internet website. All enrollments will be processed via the State's enrollment broker.

Section 100.4 – 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 FIDA Plans' websites as required in this section. All other guidance in this section applies without modification.

Section 110.1 – Promotional Activities

Under the FIDA demonstration, FIDA Plans may not offer financial or other incentives of any kind to induce potential FIDA Plan Participants to enroll with the FIDA Plan or to refer a friend, neighbor, or other person to enroll with the plan. This includes promotional items offered at FIDA Plan-targeted events. However, promotional items may be offered to potential FIDA Plan Participants. Promotional items may also be offered to current FIDA Plan Participants. Promotional items must be offered consistent with the guidance in section 110.1 of the MMG.

Section 110.1.1 – Nominal Gifts

Under the FIDA demonstration, FIDA Plans may not offer financial or other incentives of any kind to induce potential FIDA Plan Participants to enroll with the FIDA Plan or to refer a friend, neighbor, or other person to enroll with the plan. This includes nominal gifts provided at FIDA Plan-targeted events. However, nominal gifts may be offered to potential FIDA Plan Participants. Nominal gifts must be offered consistent with the guidance in section 110.1.1 of the MMG.

Section 110.2 – Marketing of Rewards and Incentives Programs

FIDA Plans may market rewards and incentives to current FIDA Plan Participants, as provided in section 110.2 of the MMG. Any rewards and incentives programs must be consistent with section 100 of Chapter 4 of the Medicare Managed Care Manual.

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 FIDA Plans since the use of independent agents/brokers is not permitted. All FIDA Plan enrollments are processed by the State's enrollment broker. We clarify that CMS and NYSDOH do not regulate compensation of employed agents for FIDA Plans.

We also clarify that FIDA Plan staff conducting marketing activity of any kind, as defined in Appendix 1 of the MMG, must be licensed in the State (and, when required, appointed) as an insurance broker/agent.

Section 120.6 – Activities That Do Not Require the Use of State-Licensed Marketing Representatives

Consistent with section 120.6 of the MMG, we clarify that in order to provide more than factual information, FIDA Plan outbound callers must be State-licensed (and, when required, appointed) marketing agents. FIDA Plans must use State-licensed (and, when required, appointed) marketing agents for any activity that meets the definition of marketing in Appendix 1 of the MMG.

Section 150 – Use of Medicare Mark for Part D Sponsors

We clarify that FIDA Plans 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 160.1 – When Prior Authorization from the Beneficiary is Not Required

The requirements of section 160.1 of the MMG apply with the following clarifications and modifications:

- We clarify that, in addition to the guidance in this section of the MMG, FIDA Plans may not send marketing materials to current FIDA Plan Participants about other Medicare products they offer, and they may not send information requesting Participants' prior authorization to receive materials about other Medicare products they offer. Such materials may only be sent when a current FIDA Plan Participant proactively makes a request for information about other Medicare products.

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 New York Medicaid has reviewed or endorsed this information."

Appendix 5 – Disclaimers

The disclaimers in Appendix 5 of the MMG apply to FIDA Plans except as modified or clarified below.

Federal Contracting Disclaimer

This disclaimer is replaced with the following FIDA Plan-specific disclaimer:

> **Federal and State Contracting Disclaimer**
>
> 42 CFR 422.2264(c), 423.2264(c)
>
> All marketing materials must include the statement that the FIDA Plan contracts with both the Federal and the State government. FIDA Plans should include the contracting statement either in the text or at the end/bottom of the piece. The following statement must be used:
>
> > "<Plan's legal or marketing name> is a managed care plan that contracts with both Medicare and the New York State Department of Health (Medicaid) to provide benefits of both programs to Participants through the Fully Integrated Duals Advantage (FIDA) Demonstration."
>
> NOTE: As noted Appendix 5 of the MMG, radio, television, and internet banner ads do not need to include the Federal and State contracting disclaimer.

Benefits Are Mentioned

These disclaimers are replaced with the following FIDA Plan-specific disclaimers:

> **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 Participant Handbook."
> >
> > "Limitations and restrictions may apply. For more information, call <plan name> <Participant Services> or read the <plan name> Participant Handbook."
> >
> > "Benefits may change on January 1 of each year."

Plan Premiums Are Mentioned

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

Availability of Non-English Translations

This disclaimer is replaced with the following FIDA Plan-specific disclaimer:

Availability of Non-English Translations

42 CFR 422.2264(e), 423.2264(e)

FIDA Plans must place the following non-English disclaimer on the materials identified as required for translation into non-English languages in section 30.5 of this guidance:

> "If you speak <language of disclaimer>, language assistance services, free of charge, are available to you. Call <Participant Services toll-free phone and TTY/TDD numbers and days and hours of operation>. The call is free."

The non-English language disclaimer must be included in all non-English languages that meet the more stringent of either the Medicare or the New York Medicaid translation standard (refer to section 30.5 of this guidance).

Referencing NCQA Approval

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

> "<Plan name> has a Model of Care approved by the National Committee for Quality Assurance (NCQA) and the New York State Department of Health until <last contract year of NCQA and State approval of Model of Care> based on a review of <plan name>'s Model of Care."

Plans Accepting Online Enrollment Requests

This disclaimer does not apply to FIDA Plans, as the Online Enrollment Center on the Medicare Plan Finder website is not available to FIDA Plans.

Third Party Materials

This disclaimer does not apply to FIDA Plans because they are not permitted to distribute materials developed by a non-benefit/non-health service-providing third party entity that is not affiliated or contracted with the FIDA Plan.

Referencing Star Ratings Information

Because MMCO is in the process of developing a Star Ratings system for MMP performance, FIDA Plans will not be subject to the Star Ratings requirements in the MMG. Therefore, this disclaimer does not apply to FIDA Plans.

Pharmacy/Provider Network and Formulary

This disclaimer is replaced with the following revised guidance:

Provider and Pharmacy Network and Formulary (List of Covered Drugs)

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."

Participant Ombudsman

As provided in section 100.2 of this guidance, FIDA Plans must include on all marketing materials (except radio ads) and plan websites the following disclaimer:

> "The State of New York has created a Participant Ombudsman Program called the Independent Consumer Advocacy Network (ICAN) to provide Participants free, confidential assistance on any services offered by <Plan Name>. ICAN may be reached toll-free at 1-844-614-8800 or online at icannys.org. (TTY users call 711, then follow the prompts to dial 844-614-8800.)"