2019 Medicare Marketing Guidelines for Providers

December 10, 2019

TUFTS Health Plan

Overview of Presentation

- Introductions
- Overview of Tufts Health Plan
- Brief Summary of Medicare's Medicare Advantage and Part D Programs
- UPDATES! Medicare Communications and Marketing Guidelines (MCMG)
- Refresher: Compliance Review & Preparing for Regulatory Submission
- Path to Growth
- Appendix and References

✓	This information is applicable to Medicare Advantage and Prescription Drug Plans, Special Needs Plans, the Medicare-Medicaid Plan, and Employer Group Waiver Plans
✗	This training is informational only. Please consults with your legal and compliance teams regarding specific programs you may pursue.

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Corporate Overview

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Tufts Health Plan Background

Local Plan, National Reputation

Local

- With offices in Watertown and Worcester, Massachusetts

Experienced

- Offering several government-sponsored health plans for over 20 years: Medicare Advantage, Prescription Drug, Special Needs Plans, Medicare/Medicaid Duals plans
- Offering Medicare Supplement plans in accordance with Massachusetts Law
- Dominion National Dental Insurance available for HMO & Supplement plans

Largest

- The largest Medicare Advantage plan membership in Massachusetts

Highly Rated

- 5 Star Rating from CMS for 5 consecutive years

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Medicare Advantage and Part D

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Medicare Advantage & Part D Overview

Medicare Advantage (Medicare Part C) Plans Offer:

- Hospital Coverage (Medicare Part A coverage)
- Provider and Outpatient Services (Medicare Part B coverage)
- Supplemental benefits allowed by CMS:
  - Vision and Dental Benefits
  - Transportation benefits
  - Home Based Care
  - Meal Delivery
  - Rewards and Incentive Programs

Part D Plans Offer:

- Prescription Drug benefits
- Health Plan Management System (HPMS) Memos & Announcements

Compliance Overview - Regulations

Health Plans operate in a *heavily* regulated environment…

Centers for Medicare and Medicaid Services (CMS)

- Federal agency charged with overseeing activities of health plans and its network of providers, hospitals, facilities, Durable Medical Equipment (DME) providers, Pharmacy Benefit Manager (PBM), vendors, etc
- CMS audits and monitors health plan performance on a continuous basis to ensure all parties protect beneficiary rights and interests and operate in accordance with all laws and regulations
- Communications to Members and Patients: Continuous review of communications from providers/health plans to patients/members.

Massachusetts Executive Office of Health and Human Services (EOHHS)

- Also reviews any communications to members

Why Such Scrutiny?

- Medicare Advantage and Part D is funded in large part through tax dollars
- Health Plans receive money from the Federal Government to offer insurance plans – the government oversees how we manage these funds and provide services to members
- CMS expects health plans and providers to not mislead beneficiaries, an often vulnerable population
- Regulators are most concerned about:
  - Protecting beneficiaries from financial harm
  - Ensuring adequate access to care
  - Ensuring unrestricted access to protections
  - Fighting fraud, waste and abuse

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Consequences for Non-Compliance

- **CMS compliance actions may include:**
  - **Notice of non-compliance**
  - **Warning letter with or without business plan**
  - Suspension of marketing and/or enrollment
  - Contract termination
- **Broad and significant potential impact:**
  - Referral for CMS program audit
  - Civil money penalties (fines)
  - Lower star rating
  - Loss of membership
  - Impact to past performance scores
  - **Loss of File and Use certification**

- We can assess potential risk, but we cannot predict exactly how regulators will react

CMS Oversight Activities

Our regulators (CMS and EOHHS) interact with us often, in many ways:

Regular communication with Regulators

- Monthly call with CMS Regional Account Manager and Medicare Compliance Officer
- Weekly call with EOHHS and Medicaid Compliance Officer
- Every 6 weeks, call with both CMS and EOHHS and Medicaid Compliance Officer

CMS reviews materials and sales activities

- Routine and ad-hoc reviews of materials
- Referrals from enrollees, other plans, etc.
- Annual and ad-hoc review of product websites (TMP)
- 'Secret shopping'

CMS oversees general and specific activities

- Annual Readiness Checklist attestation and strategic discussion with CMS
- Ad-hoc intel gathering, focused audits in response to issues/complaints
- CMS Program Audit – the 'big one'

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A Quick Summary:

Medicare **C**ommunications and **M**arketing **G**uidelines (MCMG)

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MCMG Highlights

The CMS MCMG governs all communication and marketing activities and materials.

- The MCMG is generally updated annually; the most current MCMG chapter (9/5/18) also requires review of the 8/6/19 HPMS Memo

MCMG Section	Topic
20	Communications and Marketing definitions
30.7	Prohibited Terminology/Statements
30.8	Product Endorsements/Testimonials
40.6	Marketing Star Ratings
60	Activities in a Healthcare Setting (Provider Activities)
90.12-.14	Template Materials

NOTE: This is not a full review of MCMG contents. Please refer to the MCMG for complete context.

Provider Activities (MCMG §60)

Provider Activities are also regulated by CMS.

✓	Providers may distribute and/or make available Plan marketing materials → If providers choose to distribute for one plan, they cannot refuse to distribute materials for other plans (only applies to plans the provider participates in)
✗	Plans/Part D sponsors **<u>may not</u>** allow contracted providers to: • Make phone calls or direct, urge, or attempt to persuade their patients to enroll in a specific plan based on financial or any other interests of the provider; • Perform Plan activities • Offer incentives for patients to enroll in a particular plan; • Conduct health screenings as a marketing activity

Common Areas	Restricted Areas
common entryways, vestibules, waiting rooms, hospital or nursing home cafeterias, and community, recreational, or conference rooms	exam rooms, hospital patient rooms, treatment areas, and pharmacy counter areas
Marketing materials/sales activities may be distributed/occur	**No marketing/sales activities**
Communication materials may be distributed & displayed	**Communication materials may be distributed & displayed**

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Provider Activities

✓ Permitted:

- Offer advice that is in the best interest of the patient
- Distribute/make available marketing materials in common areas after October 1st of each calendar year (must oblige all contracted plans)
- Distribute/make available communication materials anywhere, including exam rooms
- Communicate new or continuing provider affiliation announcements once a contractual agreement is approved; vehicles include direct mail, email, telephone, advertisement (if applicable, the announcement must state the provider may also contract with other plans)

X Not Permitted:

- Distribute/make available marketing materials (including applications) anywhere other than common areas
- Provide marketing materials for an upcoming plan year before October 1st of the current year
- Accept/collect scope of appointment forms
- Accept Medicare enrollment applications
- Refuse to distribute/make available materials from other plans with whom the provider contracts
- Mail marketing materials on behalf of the plan
- Make phone calls or direct, urge, or attempt to persuade their patients to enroll in a specific plan based on financial or any other interests of the provider
- Offer inducements to persuade their patients to enroll in a particular plan or organization
- Conduct health screenings as a marketing activity
- Offer anything of value to induce enrollees to select them as their provider
- Accept compensation from the Plan for any marketing or enrollment activities

Plan Activities

✓ Permitted:

- Conduct sales activities in a health care setting, but only in common areas
  - Sales presentations
  - Distribution of marketing materials
  - Distribute enrollment forms
  - Collect enrollment forms (the provider cannot do this on behalf of the plan, this must be done by the plan)
- Provide education at a sales event
- Set up a future marketing appointment at an *educational event*
- Distribute business cards and contact information at an educational event, so that beneficiaries may initiate future contact
- Include communication activities and distribute communication materials at an *educational event*

X Not Permitted:

- Advise contracted providers they must remain neutral when assisting beneficiaries with enrollment decisions
- Conduct sales activities anywhere other than a common area, including:
  - Exam rooms
  - Pharmacy counters
  - Hospital patient rooms
  - Any treatment areas (i.e. dialysis facilities)
- Sell at an *educational event* (education events are designed to inform beneficiaries about Medicare Advantage, Prescription Drug, or other Medicare programs)
- Conduct a marketing / sales event immediately following an *educational event* in the same general location

Product Endorsements/testimonials (MCMG §30.8)

Product endorsements and testimonials must adhere to the following requirements:

- The speaker must identify the Plan's/Part D sponsor's product or company by name;
- The Plan/Part D sponsor must be able to substantiate any claims made in the endorsement/testimonial.

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Why Would a Provider Market a Health Plan?

If a provider becomes acquainted with the offerings of a health plan and trusts that it manages its members in a caring and efficient manner, a provider may communicate to their patients about insurance plans to achieve the following:

- Increase patients' knowledge of quality programs that would benefit the patient's unique health care needs;
- Improve health of patients;
- Decrease financial burden of health care and/or prescription drug coverage which may improve health or increase quality of life

NOTE: This is not a full review of MCMG contents. Please refer to the MCMG for complete cont[illegible].

Path to Growth

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Path to Growth

- **Identify and collaborate with health plan partner(s)**
- **Determine needs to execute on initiatives (e.g., ability to extract patient data, provider and staff forums, key practice contacts, etc.)**
- **Develop annual engagement plan**

Component	Low	High
Provider/Practice Staff Engagement	• Communicate Medicare plan options accepted by the group	• Host Medicare 101 sessions (Medicare options, why Medicare Advantage) • Host lunch and learns with MA partners about their plan options/benefits
Group/Practice Readiness	• Display health plan marketing collateral	• Display Medicare plans accepted by the practice • Leverage website and practice digital screens • Appoint practice/patient champions • Hire a Medicare Educator
Patient Engagement	• Mail plan affiliation letter(s) to patients age 64+	• Distribute Medicare plans accepted and plan marketing collateral during patient visits (age 64+) • Communicate upcoming Medicare enrollment periods (AEP, OEP) via signage and mailings

APPENDIX

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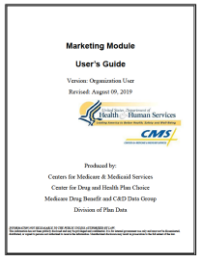
References

- **Medicare Managed Care Manuals**
  - Chapters by subject, interprets the regulations

    Medicare Advantage – LINK - Prescription Drug Benefits - LINK
- **Code of Federal Regulations**
  - 42 CFR Part 422 (Medicare Advantage) LINK
  - 42 CFR Part 423 (Prescription Drub Benefits) LINK
- **Office of the Inspector General, Compliance Guidance** LINK
- **HPMS Marketing Review Module (access required)**
  - Material Code Lookup tool
  - Users Guide (click image →)



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APPENDIX: MCMG Highlights

MCMG §	Section
20	Communications and Marketing: Intent vs Content
30.2	Standardization of Plan Name Type
40.1	Plan Comparisons
40.7	Prohibition of Open Enrollment Marketing
40.8	Marketing of Rewards and Incentives Programs
70	Websites and Social/Electronic Media
90.1	Material Identification
90.6	Status of HPMS Material
100	Required Materials

NOTE: This is not a full review of MCMG contents. Please refer to the MCMG for complete context.

Communications vs. Marketing: Intent/Content (MCMG §20)

Intent & Content examples from MCMG §20:

1. A flyer reads "Swell Health is now offering Medicare Advantage coverage in Nowhere County. Call us at 1-800-SWELL-ME for more information."
Marketing or Communication? Communication. While the intent is to draw a beneficiary's attention to Swell Health, the information provided does not contain any marketing content.

2. A billboard reads "Swell Health Offers $0 Premium Plans in Nowhere County"
Marketing or Communication? Marketing. The advertisement includes both the intent to draw the viewer's attention to the plan and has content that mentions zero-dollar premiums being available.

3. A letter is sent to enrollees to remind them to get their flu shot. The body of the letter says, "Swell Health enrollees can get their flu shot for $0 copay at a network pharmacy…"
Marketing or Communication? Communication. While the letter mentions cost sharing, the intent is not to steer the reader into making a plan selection or to stay with the plan, but rather to encourage existing enrollees to get a flu shot. The letter contains factual information about coverage and was provided only to current enrollees.

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Enrollment Periods

Enrollment Period	When	Effective Date	Enrollment options	Marketing prohibitions
Annual Enrollment Period (AEP)	October 15 – December 7	1/1 of next year	Medicare beneficiaries may make any changes	
5-Star Special Enrollment Period (SEP)	December 8 – November 30	1st of following month	One-time enrollment in a 5-star plan	
Medicare Advantage Open Enrollment Period (OEP) *(TMP, HMO, SCO)*	January 1 – March 31 Or first three months of having both A and B	1st of following month	One-time Medicare Advantage disenrollment or switch to another plan or original Medicare	Plans are prohibited from knowingly marketing to OEP-eligible MA enrollees during the OEP.
Dual Eligible SEP	First three quarters of the year	1st of following month	Once per quarter, enrollment or disenrollment	

For more information, please reference Chapter 2 - Medicare Advantage Enrollment and Disenrollment of the Medicare Managed Care Manual. For internal support, speak to the Enrollment team or Compliance.

Marketing of Rewards & Incentives Programs (MCMG §40.8)

MA Plans may include information about rewards and incentives programs in marketing materials for potential enrollees.

Marketing of rewards and incentives programs must:

- Not be used in exchange for enrollment;
- Be provided to all potential enrollees without discrimination;
- Be provided in conjunction with information about plan benefits; and
- Include information about all rewards and incentives programs offered by the MA Plan, and are not limited to a specific program, or a specific reward or incentive within a program.

Note: For information regarding rewards and incentives program requirements, see Chapter 4 of the Medicare Managed Care Manual. Nominal gifts that are part of a promotional activity are different from rewards and incentives.
Part D plans are not permitted by 42 CFR § 423.134 to develop or use rewards and incentives programs; therefore, Part D sponsors may not market reward and incentive programs.

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Website Requirements (MCMG §70)

CMS requires all Medicare Advantage plans to have a **separate and distinct website** that **includes specific documents and content** listed in sections 70.1.1 and 70.1.2 of the MCMG.

- Websites are submitted to CMS as file and use materials.
- CMS conducts annual reviews of plan websites, as well as unscheduled reviews throughout the year.
- Enrollees, providers, other plans, EOHHS, etc. are frequently accessing the website and can contact CMS with any concerns.
- Compliance conducts quarterly reviews of the website against CMS guidance and meets with Digital Marketing team to discuss.

NOTE: This is not a full review of MCMG contents. Please refer to the MCMG for complete context.