

Medicare Managed Care Manual

Chapter 3 – Marketing

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10 - Introduction

(Rev.)

This chapter explains requirements for marketing.¹ The intent of this chapter is to:

- Expedite the process for CMS' review of marketing materials;
- Conserve resources by avoiding multiple submissions/reviews of a document prior to final approval;
- Ensure consistent marketing review across the nation; and
- Enable Medicare health plans to develop accurate, consumer friendly marketing information that will assist beneficiaries in making informed health care choices.

This chapter is organized as follows:

Section 20 -- guidance on the marketing review process

Section 30 -- guidelines for advertising and other pre-enrollment materials

Section 40 -- guidelines for post-enrollment (beneficiary notification) materials

Section 50 -- guidelines on promotional activities, including health fairs and sales presentations

Section 60 -- guidelines for other marketing activities, such as marketing value added items and services and multiple lines of business

Marketing materials, in general, are informational materials targeted to Medicare beneficiaries that promote the Medicare health plan or any plan offered by the Medicare health plan, or communicate or explain a Medicare health plan.² (See 42 CFR 422.80(b).) The definition of marketing materials extends beyond the public's general concept of advertising materials to include notification forms and letters used to enroll, disenroll, and communicate with the member on many different membership scenarios. Press releases are not considered to be marketing material; however, the CMS does require that one disclaimer be used on press releases during certain times of the year. This requirement is discussed in section 30.1.A, Item # 7.

Health education materials are generally not under the purview of CMS marketing review. However, if such materials are used in any way to promote the organization or explain benefits, then they are considered marketing materials and must be approved before use. If there is any commercial message or beneficiary notification information in a health education piece, it must be reviewed by CMS.

NOTE: The CMS considers the Internet as simply another vehicle for the distribution of marketing information. Therefore, all regulatory rules and requirements associated with all other marketing conveyances (e.g., newspaper, radio, TV, brochures, etc.) are applicable to Medicare health plan marketing activity on the Internet. The CMS marketing review authority extends to all marketing activity (both advertising, pre-enrollment, and post-enrollment activity) the Medicare health plan pursues via the Internet. The specific requirements that apply depend on the type of material. For example, the advertising guidelines in §30.1 would apply to postings on the Internet that fall within the definition of advertising.

The following are requirements regarding the establishment of a name for a M+C plan:

1. Beneficiaries with disabilities must be considered part of the audience that any marketing strategy is intended to reach. Specifically, and in light of the publication of the final M+C regulation, M+C organizations may not use plan names that suggest that a plan is available only to Medicare beneficiaries age 65 or over, rather than to all beneficiaries. This prohibition generally bars plan names involving terms such as “seniors,” “65+,” etc. In fairness to M+C organizations with an existing investment in a plan name, the CMS will allow the “grandfathering” of M+C plan names established before the final rule took effect (i.e., before June 29, 2000).
2. M+C organizations are permitted to use ethnic and religious affiliation in their plan names, as long as the legal entity offering the plan has a similar proper name/affiliation. For instance, if a plan were affiliated with the Swedish Hospital of Minnesota, it would be permissible for the plan to use the tag line, “Swedish Plan, offered by Swedish Hospital System of Minnesota.”
3. M+C organizations can use the term “Medicare” or the term “Advantage” in their plan names. Furthermore, all plans in existence as of January 1, 2004 who had the name “Medicare Advantage” may continue to use that name indefinitely. However, new plans are not allowed to do business under the name “Medicare Advantage.”

If an organization chooses to retain the Medicare Advantage plan name it must insert the company name before “Medicare Advantage” (i.e., Acme Medicare Advantage plan) beginning with all 2005 plan year materials. This will help prevent any confusion with the national Medicare Advantage program.

10.1 – HIPAA Considerations

On April 14, 2003, new Federal rules governing the privacy of health data become enforceable. The rule “Standards for Privacy of Individually Identifiable Health Information” is found at 45 CFR Part 164. Health plans/M+COs may use or disclose their members’ protected health information as permitted by that rule. Specifically, they may use or disclose this information without beneficiary authorization for treatment, payment

or health operations (as those terms are defined by the rule) and for a number of public policy purposes, such as public health and research, recognized in the rule. Health plans/M+COs are not required to obtain authorization from beneficiaries prior to marketing their plan benefit packages. For additional information regarding HIPAA, go to www.hhs.gov/ocr/hipaa/.

20 - Marketing Review Process - (Rev.)

Marketing review consists of:

- Pre-approval of marketing materials before they are used by the health plan/M+C organization;
- Review of on-site marketing facilities, products, and activities during regularly scheduled contract compliance monitoring visits;
- Random review of actual marketing pieces as they are used in/by the media;
- Retrospective review of marketing materials approved under the streamlined marketing review process; and
- "For cause" review of materials and activities when complaints are made by any source.

Marketing materials, once approved, remain approved until either the material is altered by the organization or conditions change such that the material is no longer accurate. The CMS may, at any time, require an organization to change any previously approved marketing materials if found to be inaccurate, even if the original submission was accurate at the time.

CMS reviews marketing materials according to 42 CFR 422.80(c)(4), to ensure that the marketing materials “are not materially inaccurate or misleading or otherwise make material misrepresentations.” This means that CMS does not disapprove marketing materials based on typographical or grammatical errors. It is the organization’s decision to maintain professional excellence by producing marketing materials that do not contain typographical or grammatical errors.

Submission of Marketing Materials to Regional Offices

All CMS Regional Offices accept marketing material submissions by mail, fax, and E-mail.

When sending materials by E-mail, if the material is over 5 pages long you must also mail the material to the Regional Office. The 5-page requirement refers to the length of the marketing material and does not include the Marketing Material Transmittal Sheet that you may be submitting with the marketing material. The mailing requirement also applies to materials that are of large size, such as draft posters or full-page ads. These materials should be sent by overnight or priority mail. NOTE: Some Regional Offices may be equipped to accept E-mail submissions of greater than 5-pages in length without

requiring that a hardcopy submission also be mailed. Your Regional Office will notify you if this is the case.

All Regions will accept E-mail submissions in Word or .pdf format. If you have a document in a different format, you should contact the Region to determine whether it can accept that format by E-mail.

When faxing materials to the Regional Office, please call your Regional Office Managed Care Specialist/Plan Manager prior to sending the fax. Under normal circumstances a submission of over 5 pages long should not be faxed to the Regional Office. However, if you need to fax a long piece of marketing material to the Region, you should notify the Regional Office Managed Care Specialist/Plan Manager to let them know that the material is over 5 pages long, prior to sending the fax.

If you send in marketing material in multiple formats (e.g., mail and E-mail), you should indicate on the marketing material that it is being submitted in multiple formats.

Review of marketing materials in non-English language or Braille:

For marketing with materials that contain non-English or Braille information (in whole or in part), the health plan/M+C organization must submit the non-English or Braille version of the marketing piece, an English version (translation) of the piece, and a letter of attestation from the organization that both pieces convey the same information. Health plans/M+C organizations will be subject to verification monitoring review and associated penalties for violation of this CMS policy. In addition to verifying the accuracy of non-English marketing materials through monitoring review, CMS will also periodically conduct marketing review of non-English materials on an “as needed” basis. If materials are found inaccurate, health plans/M+C organizations may not distribute materials until revised materials have been approved. If national health plans/M+C organizations have submitted materials in English to the lead RO and these have been approved, the same materials in other languages or Braille may be used in other regions provided that organizations submit attestation letters to each region vouching that the non-English or Braille version contains the same information as the English language version.

Marketing Material Identification Systems:

The following requirement applies to all marketing pieces **except** television and radio ads, outdoor advertisements, and banner/banner-like ads.

Health plans/M+C organizations must use the system mandated by the reviewing RO for identifying marketing materials submitted to CMS. If the reviewing RO does not have a system, health plans/M+C organizations may use their own system for identifying marketing materials. The health plan identifier should appear on the lower left or right side of the marketing piece. After the RO approves the marketing piece, the approval date (month/year) should always be posted to the marketing piece. The approval date is the date on the CMS approval notice.

20.1 - Marketing Review Process for Multi-Region Organizations - (Rev.)

If you are an organization that operates in more than one of CMS' Regional Offices, your marketing review approach (i.e., lead region, local regions, etc) is determined by the agreement your organization makes with CMS Multi-Region Team management.

The Multi-Region M+C organization must ensure that materials submitted are consistent with the requirements in this chapter.

In addition, the Multi-Region M+C organization must distribute final copies of its national marketing materials, within a time frame to be determined by its CMS Multi-Region team, to the lead and local ROs with a dated cover letter, which identifies the recipients.

NOTE: Although the local ROs may no longer play a part in approval of the national marketing piece, the health plan/M+C organization must send a final copy of the approved material to the local ROs for their records.

20.2 - Employer Group Marketing Review Process - (Rev.)

Under the authority granted in §617 of the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000, CMS has waived all M+C organizations from having to follow the requirements under 42 CFR 422.80(a) for employer group members. This waiver applies to members of employer-group only plans and to members of individual plans who have joined the individual plan through their employer (i.e., the employer has contracted with the M+C organization for its employees/retirees to join the individual plan). This means that M+C organizations need not have CMS pre-approve marketing materials prepared by M+C organizations designed for members of employer groups. The waiver does not include waiving the disclosure requirements at 42 CFR 422.111, which outline what information must be provided to members annually and at the time of enrollment. While M+C organizations do not need to have employer group materials pre-approved under this waiver, they still must disclose the information at 42 CFR 422.111(b) to all members (e.g., plan benefits, prior authorization rules, grievance and appeals procedures, etc.).

The CMS will assume that M+C organizations have chosen to use this waiver unless we hear otherwise from the M+C organization. All M+C organizations will be required to send informational copies of employer group-specific marketing materials to the Regional Office/lead region within 14 days of their release/use. (Regional Offices will not be reviewing these materials; instead, they will keep them on file in the event any inquiries are received about them.)

The M+C organization assumes responsibility for the accuracy of the employer group marketing materials, including making any corrections to those materials when necessary. The M+C organization is expected to continue to follow the guidelines within this

chapter when preparing its marketing materials. In the unusual circumstance of an organization knowingly releasing/distributing incorrect or false marketing materials, sanctions, and or/fines may be imposed on that organization.

20.3 – Streamlined Marketing Review Process (Rev.)

The CMS offers a streamlined marketing review process to M+C organizations and demonstrations for certain marketing materials in order to ensure that the materials can be available to Medicare beneficiaries in time to make decisions about their health insurance coverage. In particular, the streamlined marketing review process only applies to marketing materials developed for the Fall campaign (i.e., the Annual Notice of Change (ANOC), the Summary of Benefits (SB), and materials necessary to develop an annual enrollment period marketing package in the Fall to encourage members to join the plan) and marketing materials developed to notify members of any mid-year benefit enhancements.

An organization may choose one of two ways to have materials reviewed and approved under the streamlined process.

Option 1: M+C organizations can obtain approval of their plan marketing materials based on submitted ACRPs.

Under this option the CMS RO will review the materials based on the submitted (i.e., not yet approved) ACRP information. The organization must submit all sections of the SB for review.

Under this option, if the organization resubmits an ACRP that includes changes/corrections that affect marketing materials that are still under review by CMS, the organization must re-submit the material to CMS containing the changes/corrections.

Option 2: An M+C organization can submit materials without cost sharing/benefit information contained in the “template” material.

Under this option the RO will review the template and the organization will be responsible for inserting the accurate cost sharing/benefit information after approval is received. Under this option, the organization need only submit section 3 of the SB for review and approval.

If the template the organization sends to the RO will vary in any way, it must describe those variations to the RO when submitting it for review (for example, if the provider directory template will be broken down into sub-versions for larger counties or will differ for plans with hospital tiering, the organization must alert the RO to this fact).

Organizations can submit the template marketing materials for review before the date that M+C organizations may submit ACRPs to CMS, since these materials would not contain the ACRP information.

Regardless of which option is chosen, keep in mind the following:

- The organization must use the “pending Federal approval” disclaimer on the materials until the ACR is approved by CMS. Once the ACR is approved, the M+C organization must remove the disclaimer.
- If the organization resubmits an ACRP that includes changes/corrections that affect marketing materials already approved (or under review, for organizations following option #2), the organization is responsible for correcting all marketing materials to reflect these ACRP changes. The material does not need another approval by CMS.
- Any organization that uses marketing materials containing errors (e.g., the benefit or cost sharing information differs from that in the approved ACRP) will be required to correct those materials for prospective members and send errata sheets/addenda to current members before January 1. The CMS will conduct a retrospective review of a sample of M+C plan materials and will notify the organization if corrections are necessary. The M+C organization will be expected to conduct a self review of all other marketing materials for plans not included in the sample and to issue CMS-approved correction notices as necessary.

20.4 – Time Frames for Marketing Review - (Rev.)

This chapter deals primarily with the pre-approval of marketing materials. As outlined in regulations at 42 CFR 422.80(a) and 417.428(a)(3), health plans/M+C organizations may not distribute any marketing materials or election forms or make them available to individuals eligible to elect a plan offered by a health plan/M+C organization unless such materials have been submitted to the CMS at least 45 days prior to distribution and the CMS has not disapproved the materials. A health plan/M+C organization may also distribute materials before 45 days have elapsed if prior approval has been granted by the CMS. Guidelines for CMS review are further described at 42 CFR 422.80(c) for M+C organizations and 417.428(a) for cost plans.

While not required to do so by law, the CMS will review materials prepared by cost plans within 10 days if they have followed CMS cost plan model language without modification. However, while the CMS intends to review the cost plan marketing materials within 10 days, the cost plan must not consider the material deemed approved if 10 days pass and it has not received approval or disapproval from the CMS since, by law, 45 days must pass before the material may be deemed approved.

- **Exception to the 45-day marketing review rule:** When an M+C organization follows CMS model language without modification, the CMS must review the

material within 10 days (as opposed to the usual 45 days). The CMS must make a determination on the material within 10 days or else the marketing material is deemed approved.

To alert the CMS reviewer to the need for a 10-day review, the health plan/M+C organization must indicate on the submission that it has followed the CMS model without modification and is requesting a 10-day review.

The 10-day review period only applies when the health plan/M+C organization has followed the CMS model without modification. "Without modification" means the health plan/M+C organization used CMS model language verbatim and only used its own language in areas where we have given them license to include their own information (such as where they are asked to include their plan-specific benefits). It also means that the health plan/M+C organization has followed the sequence of information provided in the model in its own marketing material. In these cases, the regional office may only need to review the health plan's/M+C organization's language in order to make a determination on the marketing material within the 10-day time frame.

NOTE: An M+C organization's Evidence of Coverage (EOC) cannot be approved until the organization's Adjusted Community Rate (ACR) is approved. If an M+C organization submits an EOC that follows the CMS model without modification for review early in the year (prior to ACR approval), the Regional Office will review and approve all non-ACR-related information within the 10-day review period, and will conduct a cursory review of all ACR-related information based on the M+C organization's ACR submission. However, the Regional Office will need to disapprove the release of ACR-related marketing material within the 10-day window, since there is no basis for approving it, and indicate that the material will be approved upon approval of the ACR. The Regional Office will need to promptly review and approve these marketing materials upon approval of the ACR.

20.5 – File & Use

(Rev.)

The File & Use program is designed to streamline the marketing review process. Under this process, organizations that can demonstrate to CMS that they can continually meet a particular standard of performance will be able to publish and distribute certain marketing materials without prior CMS approval.

File & Use Policies and Procedures

Either the parent company (which could be a multi-site organization but is not always a multi-site organization) or the contracting entity can request that the RO grant File & Use status to the contracting entity. File & Use status is given to and maintained by a contracting entity (i.e., also known as the "organization," this is the entity that is granted a single H #). All plans (PBPs) within a single H # will be a part of the File & Use program once the single H # is on File & Use status. Individual contracting entities can maintain this status even if other entities in the parent company do not. For example, if a

parent company operates in a number of different States (i.e., has several different H #s), and File & Use status is given to only a subsidiary operating in one State, that subsidiary organization may maintain its File & Use status, even if the subsidiaries in other States do not.

The CMS RO that is the lead for that multi-region company maintains File & Use status for multi-region company. If File & Use status is granted to a multi-region company, it means that the lead Regional Office (i.e., the “multi-region team lead”) has granted File & Use privileges to all national materials developed by the multi-region company. The local Regional Office must still review local materials, unless the local contracting entity has been granted File & Use status by the local Regional Office.

Some organizations use many non-English marketing materials. Once a contracting entity is granted File & Use status, both the English and the non-English materials are included within the File & Use program. See section 60.4.1 for detail in review of marketing materials in non-English or Braille.

- **Eligible Material:** All advertising and pre-enrollment materials used to market the health plan to potential enrollees through a format of general circulation, all enrollment and disenrollment letters, and any post-enrollment materials that do **not** describe benefits and/or cost sharing and/or plan rules.

Materials that are **not** eligible for the File & Use program are materials that CMS believes pose greater risk to a Medicare beneficiary if they are inaccurate in any way. These are post-enrollment materials (beneficiary notification materials) that describe benefits and/or cost sharing and/or plan rules and enrollment and disenrollment forms. These include materials such as the Evidence of Coverage, Summary of Benefits, and other member notices (such as the Annual Notice of Change, provider termination notices, claims denial notices, etc.).

- **Acceptable Material:** All material that is not materially inaccurate or misleading or otherwise makes a material misrepresentation, which means that the material follows the guidelines delineated in Chapter 3 of the Medicare Managed Care Manual. It also means that, as submitted, the materials do not need to be changed to avoid adverse impact on a beneficiary’s decision to elect the plan or to disenroll and/or to avoid leading a member to believe that he/she could not get coverage for a covered service.

Examples of changes that would result in a material being unacceptable include failing to include a disclaimer that a particular benefit is not available to everyone or providing inaccurate premium or benefit information.

Example of changes that would not cause a material to be unacceptable (i.e., it would still be “acceptable”) might be to not adhere to font-size requirements for an ad or to provide incorrect dates or times for a sales presentation. Keep in mind that persistent errors in sales presentation dates or persistent failure to adhere to

font size requirements could cause CMS to begin considering an organization's materials to be unacceptable.

Eligibility for the File & Use Program

The File & Use status is only granted on a calendar quarter basis (i.e., January 1, April 1, July 1, or October 1).

Organizations that use the File & Use program are agreeing to retract and revise any materials that are later determined by CMS to be misleading or inaccurate, or do not follow the guidelines outlined in this Chapter.

To become eligible for or to stay on the File & Use program, an organization must meet the following criteria.

How to **Attain** File & Use Status

The organization must request in writing to the Regional Office to be on File & Use no later than 30 days prior to each calendar quarter.

The CMS RO will select a random sample of eligible materials that the organization submitted to the RO for review over the prior 6 months. In case where zero material is found during prior 6 months, the CMS RO will go back further additional 3 months to review the materials.

Ninety (90) percent of these materials must be "acceptable," according to File & Use criteria. This means that while the materials were pre-approved by the RO, they would have met the definition of "acceptable" even if the RO had not reviewed them.

The contracting entity (i.e., the H#) must have been in the Medicare program for at least the last 18 months. One exception to this 18-month rule is if the parent company has been in the program for over 18 months and the parent company requests that the contracting entity be given File & Use status even though the H# has not been in the Medicare program for 18 months.

The CMS RO Branch Chief will notify the organization of the Region's decision in writing 7 days prior to next calendar quarter.

If the organization disagrees with the RO's decision, it can notify the National File & Use Coordinator of its disagreement. The National File & Use Coordinator and the Marketing Product Consistency Team (PCT) will review the decision made by the Regional Office and notify the organization in writing if the decision is upheld or overturned.

How to **Maintain** File & Use Status

Once an organization is on the File & Use program, it must do the following to maintain that status:

The ninety (90) percent of eligible materials used under the File & Use program during the preceding calendar quarter must be "Acceptable" per File & Use criteria (as determined by the Regional Office). The RO will conduct quarterly reviews of random sample of materials filed under the File & Use program to determine whether the materials meet this performance standard. In markets where foreign language marketing materials are used, the CMS RO may select such pieces in the sample that will be reviewed.

The organization must follow the procedures outlined in the section below entitled "Procedures to Follow When using File & Use."

The organization must continue to submit to CMS materials that are not eligible for the File & Use program in accordance with the requirements outlined in this Chapter. (For clarification, see the definition of "Eligible Material" above.)

Procedures to Follow When using File & Use

The organization must provide CMS with copies of all final materials within **5 calendar days prior** to their distribution. The "final" materials are the copies that will be sent to the printer, or the comparable copies that are provided for reproduction.

All organizations must specify the expected date of initial distribution or publication when filing materials with CMS.

All organizations must clearly indicate on the front cover of the Marketing Material Transmittal sheet that the material is being filed as a "File & Use" material.

Upon receipt of the materials, CMS will log them into the Marketing Module of the Health Plan Management System.

Organizations that have File & Use privileges may still submit using the standard procedure for prior approval any eligible materials with respect to which they would like guidance from CMS. This may prevent an organization from losing File & Use privileges.

If the organization submits materials under the File & Use program but later decides it does not want to use the materials, it must notify the RO in writing that it no longer intends to use them. This is to ensure that the RO does not review those materials as part of the random sample reviewed during the quarterly review.

Loss of File & Use Status

An organization may lose File & Use status if it uses materials that do not meet the definition of “Acceptable” and/or, fails to file two or more materials at least 5 calendar days prior to distribution or publication.

The RO will notify the organization in writing if it is in danger of losing File & Use status. This notice will indicate that the organization has been placed on a probationary review period and will delineate the length of the probationary period. The length of the probationary period will be determined by the RO on a case-by-case basis, depending on the type and impact of errors identified in marketing materials, but generally will last no less than one month and no more than one calendar quarter in length.

During the probationary period, the RO will conduct an increased level of spot checks of marketing materials used under the File & Use process. In the middle of the probationary period, the RO will provide written notice to the organization indicating whether it has seen improvement during the spot checks of marketing materials, or if the organization is still in danger of losing File & Use status. At the end of the probationary period, the RO will notify the organization in writing regarding whether or not the organization may continue with File & Use status. If the determination is to terminate File & Use status, this notice will provide the organization with 10-day advance notice of the termination.

The termination of File & Use status does not mean that an organization may never again obtain File & Use status. If CMS terminates an organization’s File & Use status, the organization may request to get back on File & Use once at least two calendar quarters have passed since its status was terminated. If an organization loses File & Use status twice, it may not request to get back on File & Use status for at least one year after the status was terminated the second time.

30 - Guidelines for Advertising and Pre-Enrollment Materials (Rev.)

The guidelines in this section apply to all advertising and pre-enrollment materials. The section is divided into three subsections:

30.1 -- provides guidelines on advertising materials

30.2 -- provides guidelines on pre-enrollment materials

30.3 -- provides the “Must Use/Can’t Use” chart

Guidelines for post-enrollment materials (beneficiary notification materials -- member handbooks, member letters, etc.) are addressed in §40.1.

Medicare health plans may market plans directly to beneficiaries of former Medicare plans that have chosen not to renew their contracts as long as the marketing does not begin until after the date the beneficiary has received the plan termination letter. Some disclosures are required on pre-enrollment materials – refer to §30.2.A, Item #8.

No Medicare health plan may compare itself to another Medicare health plan by name in either advertising or post-enrollment materials.

30.1 - Guidelines for Advertising Materials (Rev.)

Advertising materials can be defined as materials that are primarily intended to attract or appeal to a potential enrollee. They are intended to be viewed quickly by a potential enrollee and are short in length/duration. Specifically, these advertisements are:

- Television ads;
- Radio ads;
- Banner/banner-like ads;
- Outdoor advertising;
- Direct mail (as long as it does not include the enrollment form);
- Print ads (newspaper, magazine, flyers, etc.); and
- Internet advertising.

This section outlines requirements for these types of advertisements.

The following definitions apply to some of the ads addressed in this section:

- **Outdoor Advertising (ODA):** ODA is marketing material intended to capture the quick attention of a mobile audience passing the outdoor display (e.g., billboards, signs attached to transportation vehicles, etc.). ODA is designed to catch the attention of a person and influence them to call for detailed information on the product being advertised.
- **Banner Advertisements:** “Banner” advertisements are typically used in television ads, and flash information quickly across a screen with the sole purpose of enticing a prospective enrollee to call the organization for more information. This type of ad does not contain benefit or cost sharing information.
- **Banner-like Advertisements:** A “banner-like” advertisement can be ODA and is usually in some media other than television, is intended to very brief and to entice someone to call the organization or to alert someone that information is forthcoming and, like a banner ad, does not contain benefit or cost sharing information.

The following guidelines apply to advertisements:

A. Language Requirements

1. Disclaimers/Disclosures:

- a. For banner ads, banner-like ads and ODA, Medicare health plans are not required to include **any** disclaimers or disclosures (e.g., lock-in and premium information) on the ads.
- b. For all other advertising materials not listed in a. above, Medicare health plans must include the statement that the organization contracts with the Federal government. Refer to the Must Use/Can't Use/Can Use chart in §30.3 for statements the organization may use.

If the material references benefits/cost sharing, and is being used under the streamlined review process addressed in §20.3, then the material must also include the disclaimer that the benefits/cost sharing is “pending Federal approval.” With one exception for certain materials (see c. below), no other disclaimers or disclosures (e.g., lock-in and premium information) are required for these advertising materials.

- c. In addition to the disclaimers required in b. above, flyers and invitations to sales presentations that are used to invite beneficiaries to attend a group session with the intent of enrolling those individuals attending must also include the following two statements:
 - “A sales representative will be present with information and applications.”
 - “For accommodation of persons with special needs at sales meetings, call [insert phone number].”

2. **Hours of Operation:** Medicare health plans must list the hours of operation for customer services and other health plan services anywhere that these phone numbers are provided. This includes listing the hours of operation for 1-800-MEDICARE any time the organization lists the 1-800-MEDICARE number (24 hours a day/7 days a week). This requirement does not apply to any numbers included on advertising materials for persons to call for more information.
3. **TTY Numbers:** With the exceptions listed below, TTY numbers must appear in conjunction with any other phone numbers in the same font size and style as the other phone numbers. Medicare health plans can use either their own or State relay services, as long as the number included is accessible from TTY equipment.

Exceptions:

- TTY numbers need not be included on ODA and banner/banner-like ads or in radio ads that include a telephone number.
 - With respect to television ads, the TTY number need not be the same font size/style as other phone numbers since it may result in confusion and cause some prospective enrollees to call the wrong phone number. Instead, Medicare health plans are allowed to use various techniques to sharpen the differences between TTY and other phone numbers on a television ad (such as using a smaller font size for the TTY number than for the other phone numbers).
4. **Reference to Studies or Statistical Data:** Medicare health plans may refer to results of studies or statistical data in relation to customer satisfaction, quality, cost, etc. as long as specific study details are given. At a minimum, study details that need to be included are the source and dates. (**NOTE:** When submitting the material to CMS for review, unless the study that is referenced is a CMS study [such as CAHPS], the organization must provide the study sample size and number of plans surveyed for review purposes). Medicare health plans may not use study or statistical data to directly compare their plan to another. If Medicare health plans use study data that includes information on several other Medicare health plans, they will not be required to include data on all of the organizations included in the study. However, study details, such as the number of plans included, must be disclosed. Qualified superlatives (e.g., among the best, one of the highest ranked, etc.) may be used. Superlatives (e.g., ranked number one, etc.) may only be used if they are substantiated with supporting data.
5. **Physicians and Other Health Care Providers:**
- a. If the number of physicians and other health care providers is used in an ad, the ad must include only those physicians and providers available to Medicare beneficiaries. (Medicare cost plans may annotate in materials that members may obtain services from any Medicare provider).
 - b. For print ads and direct mail materials:
 - 1. If a total number of physicians and providers is used in the ad, it must separately delineate the number of primary care providers and specialists included.
 - 2. If the Medicare health plan uses the name and/or picture of providers and/or facilities to market itself, the provider information may only be used within the context of informing beneficiaries of providers that are associated with the M+C organization's delivery system.

6. Preferred Provider Organizations (including PPO Demonstrations) Only:

The following requirements only apply to Internet ads, brochures, and direct mail pieces. They do not apply to television and radio ads, ODA, and banner/banner-like ads.

- **Mandatory Supplemental Benefits:** If a PPO offers benefits, including mandatory supplemental benefits (such as prescription drugs or dental services) that are limited to in-network providers and facilities, marketing materials that mention these benefits must state that not all benefits are available from non-preferred providers.
 - **Cost Savings Described in Marketing Materials:** If a PPO states in marketing materials that prospective enrollees may save money if they join the plan, it must acknowledge the added cost of accessing services out-of-network and/or that using services in-network can cost less than using services out-of-network.
7. **Press Releases:** As stated in section 10, press releases are not marketing material. However, if an organization chooses to address any benefit, cost sharing or service area information in a press release before CMS has approved the benefits, cost sharing or service area, it must include the “pending Federal approval” disclaimer in the press release.

B. Formatting Requirements

1. **Font Size Rule:** With the exception listed below, for all written advertising materials footnotes must be the same size font as the majority of the text of the advertisement. The text size is left to the discretion of the organization and can be smaller than size 12-point font, but the majority of the text of the advertisement and footnotes must be the same size font.

Exception:

- Information contained in brochures and direct mail pieces must be no smaller than Times New Roman 12-point or equivalent font. More detail on this requirement is contained in [§30.2](#).
 - If an organization publishes a notice to close enrollment (as required in Chapter 2) in the Public Notices section of a newspaper, the organization need not use 12-point font and can instead use the font normally used by the newspaper for its Public Notices section.
2. **Font Size Rule for Internet Advertising:** Unless an exception regarding font size is noted in #1 above, any advertising materials that a Medicare health plan

places on its Web site need to be in a minimum 12-point Times New Roman-equivalent font. Neither CMS nor the Medicare health plan has any control over the actual screen size shown on individuals' computer screens that can be adjusted by the user. Therefore, the 12-point font requirement refers to how the Medicare health plan codes the font for the Web page, not how it actually looks on the user's screen.

30.2 - Guidelines for Pre-Enrollment Materials (Rev.)

“Pre-enrollment” materials provide more detail on the plan (e.g., plan rules, plan benefits, etc.) than what is provided in an advertisement, and generally are used by prospective enrollees to decide whether or not to enroll in a plan. Pre-enrollment materials include both sales and enrollment materials, including the following types of materials:

- Product descriptions used in the sales/enrollment process -- enrollment booklets, sales kits, etc.
- Sales scripts, sales presentations, etc.
- Direct mail that includes an enrollment form.

At a minimum, prior to enrollment, prospective enrollees should receive information on lock-in/access requirements and a summary of benefits. However, it is preferable to provide more information to help a prospective enrollee make the choice to enroll in a plan.

NOTE: There are other enrollment-related documents that are usually included in sales packages -- such as enrollment applications and the Statement of Understanding. Requirements and models for these documents are addressed in [Chapter 2](#).

NOTE: While the SB and could be viewed as both a pre- and post-enrollment material, we have placed instructions regarding these documents in the post-enrollment section since, at a minimum, it must be sent to current enrollees. Instructions on the SB can be found at [§40.5](#).

The following guidelines apply to pre-enrollment materials:

A. Language Requirements

1. **Lock-In Statement/Access information:** When appropriate for the plan, the concept of “lock-in” must be clearly explained in all pre-enrollment materials. For marketing pieces that tend to be of short duration we suggest: “You must receive all routine care from plan providers” or “You must use plan providers except in emergent care situations or for out-of-area urgent care/renal dialysis.” However, in all written materials used to make a sale, a more expanded version is suggested:

“If you obtain routine care from out-of-plan providers neither Medicare nor [name of M+C organization] will be responsible for the costs.”

For PPOs, POS plans and, if appropriate, Visitors Programs for any plan type, explain that use of non-plan or non-preferred providers is allowed, but may cost more to the beneficiary.

For Medicare cost plans, enrollees must be informed that after enrollment is effective, in order for them to receive the full coverage offered, services other than emergency and urgently-needed services must be obtained through the HMO or CMP. In the case of cost enrollees, however, they may receive services that are not provided or arranged by their HMO or CMP, but they would be responsible for payment of all Medicare deductibles and coinsurance as well as any additional charges as prescribed by the Medicare program. They also would be liable for any charges not covered by the Medicare program.

2. **Networks and Sub-networks:** All pre-enrollment marketing materials must clearly explain the concept of networks and sub-networks and the process for obtaining services, including referral requirements.
3. **Hours of Operation:** Medicare health plans must list the hours of operation for customer services and other health plan services anywhere that these phone numbers are provided. This includes listing the hours of operation for 1-800-MEDICARE any time the organization lists the 1-800-MEDICARE number (24 hours a day/7 days a week).
4. **Identification of All Plans in Materials:** Where M+C organizations may file separate/distinct Adjusted Community Rate (ACR) Proposals and the Plan Benefit Package (PBPs) cover the same service area (or portions of the same service area), there is no requirement that all plans be identified in all of the M+C organization’s marketing materials, although M+C organizations may identify or mention more than one plan in a single marketing piece at their discretion.
5. **Contracting Statement:** All pre-enrollment materials (and some other materials, as mentioned in §§30.1 and 40) must include a statement that the health plan/M+C organization contracts with the Federal government. Refer to the Must Use/Can’t Use/Can Use chart in §30.3 for statements the organization may use.
6. **TTY Numbers:** TTY numbers must appear in conjunction with any other phone numbers in the same font size and style as the other phone numbers. The TTY number must also include the hours of operation, if they are for customer or health plan services. Medicare health plans can use either their own or State relay services, as long as the number is accessible from TTY equipment.
7. **Availability of Alternative Formats:** To ensure that beneficiaries have access to beneficiary education materials in alternative formats (e.g. Braille, foreign languages, audio tapes, large print), Medicare health plans must provide a

disclosure on pre-enrollment materials indicating the document is available in alternative formats.

8. Marketing plans to beneficiaries of non-renewing Medicare plans: As stated in §30, Medicare health plans may market plans directly to beneficiaries of former Medicare plans that have chosen not to renew their contracts as long as the marketing does not begin until after the date the beneficiary has received the plan termination letter. In addition to the targeted message, any pre-enrollment marketing pieces must contain a statement indicating that the Medicare health plan is open to all Medicare beneficiaries eligible by age or disability in the plan's service area.

9. Preferred Provider Organizations (including PPO Demonstrations) Only:

- **Cost Savings Described in Marketing Materials:** If a PPO states in marketing materials that prospective enrollees may save money if they join the plan, it must also acknowledge the added cost of accessing services out-of-network and/or that using services in-network can cost less than using services out-of-network.
- **Preferred and Non-Preferred Benefits:** If a PPO offers benefits for which the coinsurance is the same percentage both in and out of network, the PPO must make it clear in all pre-enrollment material that member responsibility may be greater out of network since the coinsurance is based on the Medicare allowed amount and not on the potentially lower contracted amount.

Also, explain in pre-enrollment materials that with the exception of emergency or urgent care, it may cost more to get care from non-plan or non-preferred providers.

- **Mandatory Supplemental Benefits:** If a PPO offers benefits, including mandatory supplemental benefits (such as prescription drugs or dental services) that are limited to in-network providers and facilities, marketing materials that mention these benefits must state that not all benefits are available from non-preferred providers.

10. Reference to Studies or Statistical Data: Medicare health plans may refer to results of studies or statistical data in relation to customer satisfaction, quality, cost, etc. as long as specific study details are given. At a minimum, study details that need to be included are: source, dates, sample size, and number of plans surveyed. Medicare health plans may not use study or statistical data to directly compare their plan to another. If organizations use study data that includes information on several other Medicare health plans, they will not be required to include data on all of the organizations included in the study. However, study details, such as the number of plans included, must be disclosed. Qualified

superlatives (e.g., among the best, one of the highest ranked, etc.) may be used. Superlatives (e.g., ranked number one, etc.) may only be used if they are substantiated with supporting data.

11. Benefit and Plan Premium Information: Pre-enrollment materials that describe benefit and plan premium information must:

- Include the statement: “You must continue to pay your Medicare Part B premium” with premium information, even if the premium is \$0.
- When specifying benefits, specify annual limits (e.g., \$1,000 annual maximum for prescription drugs), annual benefit payout (e.g., \$700 for eyeglasses every 2 years) and applicable copayments (e.g., \$5 copayment for a doctor visit).
- Clearly state major exclusions and limitations. For example, restriction of pharmacy benefits to a specific formulary or a restricted set of pharmacies must be explained.
- Clearly state all monetary limits, as well as any restrictive policies that might impact a beneficiary’s access to drugs or services.
- When annual dollar amounts or limits are provided, also mention the applicable quarterly or monthly limits, and whether any unused portion of that benefit can be carried over from one calendar quarter to the next.
- Include a closing statement such as: “For full information on [organization name] benefits (e.g., drugs, routine physical exam, eyeglasses, dental, etc.), call our Customer Service Department at [phone number]. Our office hours are [insert hours].”
- Cost contractors must describe their premiums and cost-sharing for services received through the HMO or CMP, and any optional supplemental benefit packages they offer. They must also indicate that premiums, cost-sharing, and optional supplemental benefits may change each year.
- Make the statement that the Medicare health plan’s contract with CMS is renewed annually, and that the availability of coverage beyond the end of the current contract year is not guaranteed.

B. Formatting Requirements

1. **Font Size Rule for Member Materials:** Readability of written materials is crucial to informed choice for Medicare beneficiaries. All pre-enrollment materials that convey the rights and responsibilities of the Medicare health plan

and the member must be printed with a 12-point font size or larger. Materials subject to this requirement include, but are not limited to enrollment and disenrollment forms and notices. The CMS is cognizant of the fact that, when actually measured, 12-point font size may vary among different fonts with the result that some font types may be smaller than others. Times New Roman font type is the standard by which font size is measured. Therefore, if Medicare health plans choose to use a different font type, it is their responsibility to ensure that the font used is equivalent to or larger than Times New Roman 12-point.

2. **Font Size Rule for Materials on the Internet:** Any pre-enrollment materials that a M+C organization places on its Web site need to be in a minimum 12-point Times New Roman-equivalent font. Neither CMS nor the Medicare health plan has any control over the actual screen size shown on individuals' computer screens that can be adjusted by the user. Therefore, the 12-point font requirement refers to how the Medicare health plan codes the font for the Web page, not how it actually looks on the user's screen.
3. **Font Size Rule for Footnotes and Subscripts:** The 12-point font size or larger rule described above also applies to any footnotes or subscript annotations in notices.
4. **Footnote Placement:** Medicare health plans must adopt a standard procedure for footnote placement. Footnotes should appear either at the end of the document or the bottom of each page and in the same place throughout the document. For example, the Medicare health plan cannot include a footnote at the bottom of page 2 and then reference this footnote on page 8; the footnote has to also appear at the bottom of page 8.

C. Submission and Review Requirements

1. **Sales Scripts:** Sales scripts, both for in-home and telephone sales use, must be reviewed by the CMS prior to use. However, Medicare health plans are not required to adhere to a specific format for submission (i.e. verbatim text or bullet points).

D. Other Requirements

1. **Logos/Tag Lines:** The CMS recognizes the difference of purpose and intent between company logos/product tag lines and other advertising or marketing materials. The guidelines regarding the use of unsubstantiated statements that apply to advertising materials do not apply to logos/taglines. Contracting health plans may use unsubstantiated statements in their logos and in their product tag lines (e.g., "Your health is our major concern," "Quality care is our pledge to you," "First Care means quality care," etc.). This latitude is allowed only in logo/product tag line language. Such unsubstantiated claims cannot be used in general advertising text regardless of the communication media employed to

distribute the message. Notwithstanding the ability to use unsubstantiated statements as indicated above, the use of superlatives is not permitted in logos/product tag lines (e.g., “First Care means the first in quality care” or “Senior’s Plus means the best in managed care”). Refer to the “Must Use/Can’t Use/Can Use” chart in §30.3 of this Chapter for more information on restrictions associated with the use of superlatives.

30.3 - “Must Use/Can’t Use/Can Use” Chart (Rev.)

The “Must Use/Can’t Use/Can Use” Chart provides guidance on language that Medicare health plans must use, can’t use, and can use in pre-enrollment materials and in post-enrollment materials (as addressed in §40.1). With the exception of the “Contract with the Government” topic contained in the Chart, the “Must Use” column does **not** apply to advertisements (as defined in §30.1). Only the “Can’t Use” and “Can Use” column applies to advertisements.

The Chart does not indicate when a particular topic must be included in marketing materials. Instead, it provides guidance on language use when the topic is included on a particular marketing piece. If a topic is required to be included in a marketing material, the requirement for its inclusion can be found in §30.2 for pre-enrollment materials and §40.1 for post-enrollment materials.

Although use of suggested “Can Use” language is not required, its use will expedite the review process. Please note that the specific language and format used in all standardized marketing materials like the standardized Summary of Benefits is required. Please also note that the language provided in the “Must Use” column of the “Must Use/Can’t Use/Can Use Chart” is required if the particular topic is being addressed in a pre- or post-enrollment marketing material.

Some phrases in this document may not apply to your organization’s benefit package or marketing strategy. We caution you to apply the information contained in this document with the understanding that it must be evaluated for applicability to your organization.

**“Must Use/Can’t Use/Can Use” Chart
(Rev.)**

The following chart provides guidance on language that M+C organizations must use, can’t use, and can use in pre-enrollment materials and in post-enrollment materials. With the exception of the “Contract with the Government” topic contained in the Chart, the “Must Use” column does **not** apply to advertisements (as defined in §30.1). Only the “Can’t Use” and “Can Use” column applies to advertisements.

This Chart does not indicate when a particular topic must be included in marketing materials. Instead, it provides guidance on language use when the topic is included on a particular marketing piece. If a topic is required to be included in a marketing material, the requirement for its inclusion can be found in §30.2 for pre-enrollment materials and §40.1 for post-enrollment materials.

The use of any language found in the “Can Use” column is discretionary.

Subject	Must Use	Can’t Use	Can Use	Reason
Lock-In	<ul style="list-style-type: none"> - Enrolled members “must use (name of plan/ organization) (contracting, plan, affiliated, or name of plan organization participating) providers for routine care” - “Available to all Medicare beneficiaries” - For Medicare cost plans, all pre-enrollment materials must clearly explain that members may use plan and non-plan providers, and also explain the benefit/cost sharing differentials between use of plan and non-plan providers. <p>This information may be either in the text of the piece or in a disclaimer at the end/bottom of the piece</p>	<ul style="list-style-type: none"> - The term “Participating Providers” 		

Subject	Must Use	Can't Use	Can Use	Reason
<p>Descriptions of the Medicare health plan's Quality ⁶</p>		<ul style="list-style-type: none"> - Superlatives (e.g., highest, best)⁷ - Unsubstantiated comparisons with other Medicare health plans - Direct negative statements about other Medicare health plans including individual statements from members or former members 	<ul style="list-style-type: none"> - Qualified superlatives (e.g., among the best, some of the highest) - Superlatives (e.g., ranked number 1, if they can be substantiated by ratings, studies or statistics (Source must be identified in the advertising piece.) See §30 for more information. - “[Name of plan/organization] delivers (adjective) quality of care” - Can use satisfaction survey results, e.g., “The (name of specific study) indicated we rated highest in member satisfaction.” (Must disclose year and source.) See §30 for more information. - M+C organizations may use CAHPS survey data regarding their own organization but may not use it to make specific comparisons to other M+C organizations. 	
<p>Premium Costs</p>	<ul style="list-style-type: none"> - If a Medicare health plan premium is mentioned, it must be accompanied by a statement that beneficiaries must continue to pay Part B premium or Medicare premium. - If an annual dollar amount/limit is mentioned, quarterly or monthly 	<ul style="list-style-type: none"> - “No premium” - “No premium or deductible” - “Free” 	<p>The following may be used:</p> <ul style="list-style-type: none"> - “No plan premium” - “Plan premium equals _____” - “\$0 plan premium” - At no extra cost to you” but 	

Subject	Must Use	Can't Use	Can Use	Reason
	<p>limits must also be mentioned as well as any ability to carry over any remaining benefit from quarter to quarter.</p>		<p>only if referring to a specific benefit</p> <ul style="list-style-type: none"> - “No plan premium or deductibles” - “No plan premium or deductibles (you must continue to pay the Medicare Part B premium” - “No plan premium beyond your monthly Medicare payment” - “No plan premium other than what you currently pay for Medicare” 	
<p>Testimonials</p>	<ul style="list-style-type: none"> - Content must comply with CMS marketing guidelines, including statements by members. - Speaker must identify specific Medicare health plan membership. 	<ul style="list-style-type: none"> - Cannot have non-members say he/she belongs. (Can use actors, but they cannot say they belong to the Medicare health plan.) - Medicare health plans cannot use negative testimonials about other plans from members or ex-members. 		

Subject	Must Use	Can't Use	Can Use	Reason
Contract with the Government	<p>With the exception of outdoor advertisements and banner/banner-like ads, the SB, EOC, Member Handbook and all other advertisements and all pre-enrollment materials <u>must</u> include this disclaimer.</p> <p>This information may be either in the text of the piece or in a disclosure paragraph at the end/bottom of the piece.</p> <ul style="list-style-type: none"> - “A/An [insert plan type: HMO, PPO, POS plan, PSO, etc.] with a Medicare contract” - “An M+C organization with a Medicare contract” - “A Health Plan with a Medicare contract” - “A Federally Qualified HMO with a Medicare contract” - “A Federally Qualified Medicare contracting HMO” - “Medicare approved [insert plan type: HMO, PPO, POS plan, PSO etc.]” - “A Coordinated Care Plan with an Medicare+Choice contract” 	<ul style="list-style-type: none"> - “Recommended or endorsed by Medicare” - Cannot imply that Medicare health plan has a unique or custom arrangement with the government, e.g.: <ul style="list-style-type: none"> -- “Special contract with Medicare” --”Special Medicare health plan for Medicare beneficiaries” 		
Physicians and Other Health Care Providers	<ul style="list-style-type: none"> - If the number of physicians and other health care providers is used, it must include only providers available to Medicare beneficiaries. - If a total number of physicians 	<ul style="list-style-type: none"> - Implication that providers are available exclusively through the particular HMO unless such a statement is true 	<ul style="list-style-type: none"> - “(Medicare health plan’s name) participating providers” - “Plan” providers - “Network” providers 	<p>Do not use the word “participating” when referring to Medicare health plan providers (unless you use Medicare health plan name), since it could be</p>

Subject	Must Use	Can't Use	Can Use	Reason
	<p>and providers is used it must separately delineate the number of primary care providers and specialists included.</p> <p>- If the Medicare health plan uses the name and/or picture of providers and/or facilities to market itself, the provider information may only be used within the context of informing beneficiaries of providers that are associated with the organization's delivery system.</p>	<p>- "Participating providers" unless you use Medicare health plan name</p> <p>- The M+C organization may not identify itself by the name of a participating provider or provider group, with the exception of a PSO.</p>	<p>- "Contracting" providers</p> <p>- "Affiliated" providers</p> <p>- Number of providers should be same total number of Medicare providers</p>	<p>confused with a participation agreement with Medicare. Organizations should either use "contracting" or "Medicare health plan name" when referring to Medicare health plan providers.</p> <p>It must be clear to the beneficiary with whom the contract with CMS is held.</p>
Eligibility	<p>- Must indicate that beneficiaries must be entitled to Part A and enrolled in B</p> <p>For M+C plans-- Must indicate that all Medicare beneficiaries with Parts A and B of Medicare may apply</p> <p>For §1876 cost contracting health plans:</p> <p>-- Must indicate that all Medicare beneficiaries may apply</p> <p>This information may be either in the text of the piece or in a disclosure paragraph at the end/bottom of the piece.</p>	<p>"No health screening" unless specific mention is made of ESRD</p> <p>"Seniors" unless term appears with "and all other Medicare eligibles"</p> <p>"[Name of Medicare Health plan] designed especially for seniors"</p> <p>"Senior Medicare health plan" unless part of Medicare health plan name</p> <p>"Individuals age 65 and over"</p>	<p>- "Anyone with Medicare may apply"</p> <p>- "Medicare entitled by age or disability"</p> <p>- "Individuals eligible for Medicare by age or disability"</p> <p>- "Individuals on or entitled to Medicare by age or disability"</p> <p>- "Medicare beneficiaries"</p> <p>- "Medicare enrollees"</p> <p>- "People with or on Medicare"</p> <p>- "No physicals required"</p> <p>- "No health screening" if a caveat is included for ESRD</p> <p>- "Grandfathered enrollees"</p>	<p>Since all Medicare beneficiaries may enroll in Medicare-contracting HMOs, you may not refer to your plan as a "senior Medicare health plan" (unless you refer to it as part of the health plan name). The term "senior Medicare health plan" implies that disabled beneficiaries may not enroll.</p> <p>Medicare Part A is not a requirement for enrollment in Medicare-cost contracting HMOs. M+C organizations may only enroll individuals with both Parts A and B of Medicare, with the exception of "grandfathered" members.</p>

Subject	Must Use	Can't Use	Can Use	Reason
Claims Forms / Paperwork		<p>“No paperwork”</p> <p>“No claims or paperwork/complicated paperwork”</p> <p>No claims forms”</p>	<p>“Virtually no paperwork”</p> <p>“No paperwork when using Medicare health plan providers”</p> <p>“Hardly any paperwork”</p>	Members may be required to submit bills or claims documentation when using out-of-plan providers.
Benefits: a) Comparison	<p>- If premiums and benefits vary by geographic area, must clearly state this or must clearly state geographic area in which differing premiums and benefits are applicable.</p> <p>- If only benefits vary, clearly state geographic area in which benefits are applicable.</p>	<p>- Minimal co-pays may vary by county</p> <p>- Minimal co-pays may apply</p>	<p>- “Premiums and benefits may vary by county [and plan]” or “These benefits apply to the following counties”*</p> <p>- “Except for _____ county”*</p> <p>- Medicare health plans may compare benefits to Medigap plans as long as information is provided accurately and in detail.</p>	Premiums, benefits, and/or copayment amounts may vary by county within a given service area.
Benefits: b) Limitations		- “At no extra cost to you” or “free” if co-pays apply	<p>- State exact dollar amount limit on any benefit</p> <p>- “Limitations and restrictions may apply”</p> <p>- “Minimal copayments will apply”</p> <p>- “Minimal copayments vary by county”*</p> <p>- State which benefits are subject to limitations</p>	If benefits are specified within the piece, any applicable copayment should be stated or you may include the general statement as shown.

Subject	Must Use	Can't Use	Can Use	Reason
Benefits: c) Prescription Drugs	<ul style="list-style-type: none"> - If prescription drugs are mentioned and have limitations, must say: - Limited outpatient drug coverage; or, - Drug coverage benefits subject to limitations; or - Up to xxx annual/ quarterly/ monthly limit or xxx limit per year/quarter/month and other limits and restrictions may apply. - Copayment amounts and indicate for a xx number of days supply - If benefits are restricted to a formulary, this must be clearly stated. - In addition, must state: - That formulary contents are subject to change within a contract year without advance notice - Medicare health plan should be contacted for additional details. 	<ul style="list-style-type: none"> - “We cover prescription drugs” unless accompanied by reference to limitation - “Prescription drug coverage” unless accompanied by reference to limitation 	<ul style="list-style-type: none"> - Fully disclose dollar amount of copayments and annual/quarterly/monthly limit - If limited, you must say so - Limited outpatient drug coverage with xx copayments for xx number of days supply and xxx annual/quarterly/monthly limit - “Prescriptions must be filled at contracting or Medicare health plan affiliated pharmacies.” 	Prescription drugs are an important benefit that must be adequately described. Any dollar limits must be clearly conveyed.

Subject	Must Use	Can't Use	Can Use	Reason
Benefits: d) Multi-Year Benefits	- Whenever multi-year benefits are discussed, M+C organizations are required to make appropriate disclosure that the benefit may not be available in subsequent years.		<ul style="list-style-type: none"> - “[benefit] may not be available in subsequent years” OR - “[name of M+C organization] contracts with Medicare each year, this benefit may not may not be available next year” - “At the end of each year, [name of organization] may leave the Medicare program or change plan benefits. However, new plans or benefits may also become available.” 	Potential applicants and members must be informed that multi-year benefits in current year benefit packages are not guaranteed in future contract years.
- Definitions - Emergency and Urgently Needed Care		<ul style="list-style-type: none"> - “Life threatening” - “True emergency” 	<ul style="list-style-type: none"> - Emergency - definition as stated in current CMS policy. - Urgent - definition as stated in current CMS policy. 	Emergency and urgent care criteria should be explained per Medicare guidelines rather than in the commercial context.
Drawings / Prizes		- “Eligible for free drawing and prizes”	<ul style="list-style-type: none"> - “Eligible for a free drawing and prizes with no obligation” - “Free drawing without obligation” 	It is a prohibited marketing practice to use free gifts and prizes as an inducement to enroll. Any gratuity must be made available to all participants regardless of enrollment. The value of any gift must be less than the nominal amount of \$15.

Subject	Must Use	Can't Use	Can Use	Reason
Sales presentations	<p>- Indicate that a telecommunication device for the deaf (TTY) is available to get additional information or to set up a meeting with a sales representative.</p> <p>If mentioned in a response card where the beneficiary's phone number is requested:</p> <p>- "A sales representative may call."</p>	<p>- "A health plan representative will be available to answer questions."</p>	<p>"A telecommunications device for the deaf (TTY) is available to get additional information or set up a meeting with a sales representative."</p>	
Medicare + Choice Provider Sponsored Organizations		<p>- State licensed M+C organizations may not use the specific term "M+C PSO" or imply that they are one of the specific PSO options for Medicare beneficiaries defined by the Balanced Budget Act of 1997 and implementing regulations at 42 CFR 422.350-.356.</p>	<p>- May only identify itself as an "M+C Provider Sponsored Organization (PSO)" or imply that it is one of the PSO options for Medicare beneficiaries under M+C if it has received a State licensure waiver from CMS in accordance with 42 CFR 422.370-.378.</p> <p>- State licensed M+C organizations may identify themselves as a "Provider Sponsored Organization (PSO)," a "State licensed PSO with a M+C contract," or any other term generally applied to managed care organizations that are sponsored by health care providers</p>	

⁶ Note - CMS has the discretion to disapprove language based on site visit reviews identifying substantial deficiencies in Medicare health plan operations.

⁷ Note - A member of the organization may use a superlative in relating their personal experience with the organization so long as the testimonial is preceded with the phrase “in my opinion” (e.g., “I have been with the plan/organization for 10 years and in my opinion they have given me the best care possible.”) If the member does not preface the superlative statement with the “in my opinion” phrase, the member must substantiate the statement with an acceptable qualifying information source.

40 - Guidelines for Post-Enrollment Materials (Rev.)

“Post-enrollment” materials are those materials used by Medicare health plans to convey benefit or plan operational information to enrolled beneficiary health plan members. Post-enrollment marketing materials includes all notification forms and letters and sections of newsletters that are used to enroll, disenroll, and communicate with the member on many different membership operational policies, rules and procedures. Post-enrollment marketing materials include, but are not limited to, the Annual Notice of Change, the Evidence of Coverage, the Provider Directory, and the Summary of Benefits. These materials are also called beneficiary notification materials and subject to additional CMS requirements.

This section is organized in several sub-sections:

40.1 -- provides guidelines on beneficiary notification materials

40.2 -- provides guidelines on provider directories

40.3 -- provides guidance on drug formularies

40.4 -- provides guidelines on outreach to dual eligible membership (section removed)

40.5 -- provides guidance on the SB

40.6 -- provides guidance on the EOC

Please note that Medicare health plans may not use Medicare member lists for non-plan-specific purposes. If an organization has questions regarding specific material, which it wishes to send to its Medicare members, the material should be submitted to CMS for a decision.

NOTE: the requirements outlined in the “Must Use/Can’t Use/Can Use” Chart contained in [§30.3](#) also apply to post-enrollment materials.

40.1 - General Guidance for Post-Enrollment Materials (Rev.)

In many cases, the requirements for pre-enrollment notices (in [§30](#)) are the same for post-enrollment materials. The following are guidelines for post-enrollment materials:

A. Language Requirements

1. **Lock-In Statement:** The concept of “lock-in” must be clearly explained in the SB, the EOC, and Member Handbooks.

For Medicare cost plans, all pre-enrollment materials must clearly explain that members may use plan and non-plan providers, and also explain the benefit/cost sharing differentials between use of plan and non-plan providers.

2. **Networks and Sub-networks:** The SB, the EOC, Provider Directories and Member Handbooks must clearly explain the concept of networks and sub-networks and the process for obtaining services including referral requirements.
3. **Hours of Operation:** Medicare health plans must list the hours of operation for customer services and other health plan services anywhere that these phone numbers are provided. This includes listing the hours of operation for 1-800-MEDICARE any time the organization lists the 1-800-MEDICARE number (24 hours a day/7 days a week).
4. **Contracting Statement:** The SB, Member Handbooks, and the EOC must include a statement that the organization contracts with the Federal government. Refer to the Must Use/Can't Use/Can Use chart in §30 for statements the organization may use. All other post enrollment materials are not required to have this statement (i.e., it is optional).
5. **TTY Numbers:** TTY numbers must appear in conjunction with any other phone numbers in the same font size and style as the other phone numbers. The TTY number must also include the hours of operation, if they are for customer or health plan services. Medicare health plans can use either their own or State relay services, as long as the number included is accessible from TTY equipment.
6. **Availability of Alternative Formats (EOC only):** To ensure that beneficiaries have access to beneficiary education materials in alternative formats (e.g. Braille, foreign languages, audio tapes, large print), Medicare health plans must provide a disclosure on the EOC indicating the document is available in alternative formats.
7. **Reference to Studies or Statistical Data:** Medicare Health plans may refer to results of studies or statistical data in relation to customer satisfaction, quality, cost, etc. as long as specific study details are given. At a minimum, study details that need to be included are: source, dates, sample size, and number of plans surveyed. Organizations may not use study or statistical data to directly compare their plan to another. If Medicare health plans use study data that includes information on several other Medicare health plans, they will not be required to include data on all of the organizations included in the study. However, study details, such as the number of plans included, must be disclosed. Qualified superlatives (e.g., among the best, one of the highest ranked, etc.) may be used. Superlatives (e.g., ranked number one, etc.) may only be used if they are substantiated with supporting data.

- 8. Member ID Cards:** CMS recommends that all Medicare health plans, especially PPOs and PFFS Plans, include the phrase “Medicare limiting charges apply” on Member ID cards. However, use of this phrase is optional. The CMS believes that use of this phrase on a card that most providers will see is a reliable method of informing providers of the billing rules for the plan, and thus could reduce the chance for incorrect or inappropriate balance billing.

The CMS also recommends that PPOs and PFFS Plans include the statement that the provider should bill the PPO or PFFS organization and not Original Medicare. The CMS believes this statement will help prevent claim processing errors. However, use of this statement is optional.

9. Preferred Provider Organizations (including PPO Demonstrations) Only:

- **Mandatory Supplemental Benefits:** If a PPO offers benefits, including mandatory supplemental benefits (such as prescription drugs or dental services) that are limited to in-network providers and facilities, marketing materials that mention these benefits must state that not all benefits are available from non-preferred providers. The EOC must specifically explain which benefits are offered at the non-preferred benefit level and any limitations that may apply.
- **Prior Notification/Authorization Requirements:** Some PPOs may require or request that members notify them prior to receiving certain services. In these cases, the organization must clearly define the requirement in marketing materials. It must also include the information in the PBP Notes section so that the appropriate language regarding the penalty may be used in marketing materials. If there is a penalty for not receiving prior referral/notification/authorization, marketing materials that mention these services must clearly describe the penalty.
- **Post-Stabilization (PPO Demonstrations Only):** In the EOC and the SB (Section 3), PPO Demonstrations must specify all cost sharing requirements with regard to emergency hospital admissions, including whether the in-network or out-of-network cost sharing is required for enrollees who are stabilized and receive post-stabilization care in a non-preferred (out-of-network) hospital following an emergency situation. If the Demo includes a cap on enrollee out-of-pocket costs for such services, state the out-of-pocket maximum amount. In the EOC, clearly state any other requirements associated with an out-of-network emergency hospital admission, e.g., enrollee notification upon stabilization, policies with regard to transfers to network hospitals, etc.

B. Formatting Requirements

1. **Font Size Rule for Member Materials:** Readability of written materials is crucial to informed choice for Medicare beneficiaries. All member materials that convey the rights and responsibilities of the Medicare health plan and the member must be printed with a 12-point font size or larger. Materials subject to this requirement include, but are not limited to, the EOC or member brochure and contract, letters confirming enrollment and disenrollment, notices of non-coverage and notices informing members of their right to an appeals process. The CMS is cognizant of the fact that, when actually measured, 12-point font size may vary among different fonts with the result that some font types may be smaller than others. Times New Roman font type is the standard by which font size is measured. Therefore, if Medicare health plans choose to use a different font type, it is their responsibility to ensure that the font used is equivalent to or larger than Times New Roman 12-point.

Exception:

- Due to the size of the member ID card, the member ID card need not have all information in a 12-point font size or larger.
2. **Font Size Rule for Internet Materials:** Unless an exception for font size is noted in #1 above, any post-enrollment materials that a Medicare health plan places on its Web site need to be in a minimum 12-point Times New Roman-equivalent font. Neither CMS nor organization has any control over the actual screen size shown on individuals' computer screens that can be adjusted by the user. Therefore, the 12-point font requirement refers to how the organization codes the font for the Web page, not how it actually looks on the user's screen.
 3. **Font Size Rule for Footnotes and Subscripts:** The 12-point font size or larger rule also applies to any footnotes or subscript annotations in post-enrollment notices.
 4. **Footnote Placement:** Medicare health plans must adopt a standard procedure for footnote placement. Footnotes should appear either at the end of the document or the bottom of each page and in the same place throughout the document. For example, the organization cannot include a footnote at the bottom of page 2 and then reference this footnote on page 8; the footnote has to also appear at the bottom of page 8.

C. Other Requirements

1. **Option to Choose Media Type:** With respect to the SB, the EOC, and the Provider Directory, Medicare health plans have the option of contacting members to determine in what format they would like to receive the materials (e.g., hardcopy, CD ROM, Internet Web pages, etc.). Medicare health plans that choose

this option must contact members in writing (e.g., by letter, postcard, newsletter article, etc.) to determine whether they would like to receive the SB, EOC, and/or the Provider Directory in another format. If the organization does not receive a response from the member, then the organization must assume that the member wants to receive the information in hardcopy.

If the organization sends one provider directory to an address where up to four members reside (as allowed in §40.2), then it may send one written notice regarding choice of media type to that address (if it is notifying members by letter), rather than one notice to each individual member at that address. A reply from one member at that address constitutes a reply for the entire address.

The following would also apply:

- The member must receive the materials in the required time frames, regardless of the format.
- For the EOC and the SB, if the organization will be providing any of these marketing materials via an Internet Web page, then it must establish a process for informing members when that Web page has been updated. For example, the organization could notify members by newsletter article, by e-mail, by postcard, etc. Often any change in the EOC or SB is communicated to all members by newsletter and notification that the change has been made on the Web page could be made at the same time. This requirement does not apply to provider directories since provider directory updates can occur far more frequently than updates to the EOC or SB.
- The non-hardcopy format should match the approved hardcopy format, and if it does, it will not need additional CMS approval. If anything is added or deleted, the non-hardcopy format must receive separate CMS approval.

NOTE: Some organizations use a database/search function for their provider directory on the Internet. In this case, as long as the information that comes up on a specific provider is the same information as what is contained in the hardcopy format, then the Internet provider directory would be considered to be the same as the hardcopy format and would not need additional CMS approval.

40.1.1 - Use of Model Post-Enrollment Materials - (Rev.)

The passage of the Benefits Improvement and Protection Act of 2000 has changed the review process for model beneficiary notification materials. For specific guidance on these changes and the usage of model materials, [see §20 - Marketing Review Process](#).

40.1.2 - Use of Standardized Post-Enrollment Materials - (Rev.)

The CMS has implemented certain standardized beneficiary notification marketing materials for health plan participants in Medicare managed care. In particular, all M+C organizations are required to use a standardized Summary of Benefits (SB). Use of standardized materials by M+C organizations is mandatory. Guidelines for the standard SB can be found in section 40.4.

M+C organizations must send an SB to members of employer group plans and to members of individual plans who have joined the individual plan through their employer, or it must arrange to have the employer send one to these members. However, M+C organizations are exempt from using the standardized SB for employer group members and members of individual plans who have joined the individual plan through their employer, and may instead develop a different format for the SB.

40.1.3 - Model Annual Notice of Change - (Rev.)

All M+C organizations are required to give members notice of Medicare program and health plan changes taking place on January 1 of the upcoming year, by October 31 of the current year. Cost plans must give notice within 30 days of the effective date of the Medicare program and health plan changes (i.e., by December 1 for January 1 changes). This requirement applies to all plan enrollees, including employer group enrollees. "Give notice" means that members must have **received** the notice by the required date. This notice is known as the "Annual Notice of Change," or "ANOC."

The ANOC must be member specific. This means that the notice must have the member's own name either on the envelope addressed to the member or on the ANOC itself. The following is a model ANOC for M+C organizations and cost plans.

NOTE regarding ANOCs and SBs for employer group members: With one exception, health plans/M+C organizations must send ANOCs and SBs to employer group members at the same time they send it to all other individual members. The exception is when there are no Medicare changes or plan changes taking effect on January 1 of the upcoming year. In this case, the organization does not need to send an ANOC (or an SB) to employer group enrollees. For example, if there were no January 1 changes in Medicare coverage to communicate to enrollees in a particular year, it is possible that an organization may not have any January 1 plan changes to communicate to their employer group enrollees if the employer group open enrollment season occurs at some other time during the year (e.g., July 1). Under these circumstances, the organization does not need to send an ANOC (or an SB) to employer group members in October (or December for Medicare cost plans). However, keep in mind that the organization would still need to notify employer group enrollees of any upcoming plan changes with an ANOC and SB at least 30 days in advance of those changes, as required at 42 CFR 422.111(d)(3) and 42 CFR 417.436(c).

MODEL ANNUAL NOTICE OF CHANGE

Dear [member name] - or - [Member]:

[Note: The organization may modify this introductory paragraph to tailor to its needs, as long as the paragraph is kept brief.] This is the time of year when we like to thank you for your membership and inform you of new plan changes for the upcoming year. Beginning January 1, [insert upcoming year], there will be some changes to [insert plan name]. These changes are described in this letter.

How will my monthly premiums change?

Starting January 1, [insert upcoming year], the monthly premium that you pay to [insert plan name] will [increase/decrease] from \$_____ to \$_____ OR stay the same at \$_____.

How will my benefits and costs change?

[Clearly describe all benefit changes, including changes in cost sharing, annual drug cap, drug coverage, and any new benefits that will be offered by the plan in the coming year or that will be covered by Medicare. Also describe any benefits offered in the current year that will no longer be offered by the plan in the upcoming year. When describing benefit changes, do so by comparing the current year benefit with the upcoming year benefit.]

We have enclosed a summary of your benefits, premiums and copays that will be effective January 1, [insert upcoming year]. [M+C organizations: Insert whichever of the two following sentences is appropriate for your circumstance: (1) "Medicare has reviewed and approved the changes in benefits, premiums, and other costs included in this letter and on the enclosed Summary of Benefits" or, (2) "The changes in benefits, premiums, other costs included in this letter and on the enclosed Summary of Benefits are pending Federal approval."] [Cost plans insert the following sentence: Medicare has reviewed the changes in benefits, premiums, and other costs included in this letter and on the enclosed Summary of Benefits"] We will send you an [insert: "Evidence of Coverage" or whichever name is used by your MCO as the name for the EOC] [insert either "by [date]" or "at a later date"]. All changes begin January 1, [insert upcoming year], and will be in effect through December 31, [insert upcoming year]. Rest assured that you will be a member of [insert plan name] for the coming year if you do nothing to change your Medicare coverage.

[If the organization lists more than one plan offering on the enclosed SB, the organization must identify the specific plan in which the member will be enrolled. In addition, if the organization lists only one plan in the SB but offers multiple plans in the service area, the ANOC must notify beneficiaries that additional plans are available and include specific information on how beneficiaries can obtain more information.]

Are there other benefits I can get?

[Include this section if the plan offers optional supplemental benefits.]
[Clearly describe any optional supplemental benefits and the premiums for those benefits. A description of the process that the member must follow to elect optional supplemental benefits must also be included.]

Where can I get more information?

Please call our Member Services Department [insert days and hours of operation], at [insert phone number] if you have any questions. TTY users should call [insert TTY phone number].

You can contact us if you need additional information, including:

- Information about how we control the use of services and costs;

[Cost plans do not need to include the remaining three bullets]

- Information on the number of appeals and grievances filed by our members;
- A summary description of how we pay our doctors;
- A description of our financial condition, including a summary of our most recently audited statement.

You can also get information about the Medicare program and Medicare health plans from the www.medicare.gov Web site or by calling 1-800 MEDICARE (1-800-633-4227). TTY users should call 1-877-486-2048. Medicare customer service representatives are available, 24 hours a day, including weekends, to answer questions about Medicare. We look forward to serving you now and in the future.

Sincerely,
Plan Representative

ENCLOSURE - Summary of Benefits

40.2 - Specific Guidance About Provider Directories (Rev.)

Regulations at 42 CFR 422.111(a) and (b) require that M+C organizations disclose the following information to each enrollee in clear, accurate, and standardized form at the time of enrollment and at least annually thereafter.⁹ M+C organizations usually include this information in their provider directory. The directory is then given to new members upon enrollment and existing members on an annual basis.¹⁰ Regulations at 42 CFR 417.436(a)(2) and (b) also require that Medicare cost plans send a provider directory to members at the time of enrollment and annually.

1. The directory must include the number, mix, and distribution, including addresses of providers from whom enrollees may obtain services, as well as any out-of-network coverage or point-of-service option.

In addition, provider directories should also contain the following (this is optional):

1. Names, complete addresses, and phone numbers of the primary care physicians;
2. Names and addresses (city or town) of specialists, skilled nursing facilities, hospitals, outpatient mental health providers, and pharmacies, where outpatient prescription drugs are offered by the M+C plan;
3. General information regarding lock-in, including the role of the primary care physician (PCP) as well as the process for selecting a new PCP and any specific requirements for referrals to specialists and ancillary providers;
4. A description of the plan's service area, including a list of cities and towns;
5. Telephone numbers for customer service or appropriate contact information (including the hours of service) for members who have questions or require assistance in selecting a PCP; ¹¹
6. Instructions to enrollees that, in cases where non-contracting providers submit a bill directly to the enrollee, the enrollee should not pay the bill, but submit it to the M+C organization for processing and determination of enrollee liability, if any.
7. Information regarding out-of-area coverage and emergency coverage, including the process and procedures for obtaining emergency services, and the location where emergency care can be obtained, as well as other locations where contracting physicians and hospitals provide emergency services, and post-stabilization care included in the M+C plan;
8. Prior authorization rules and other review requirements that must be met in order to ensure payment for the services; and
9. A general disclaimer that indicates that the directory is current as of a particular date and that a provider's listing in the directory does not guarantee that the provider is still in the network or accepting new members.

PCP and Specialty Directories: Medicare health plans may publish separate PCP and Specialty directories provided that both directories must be given to enrollees at the time of enrollment and at least annually thereafter. Organizations that use sub-networks of providers must clearly delineate these sub-networks (preferably by listing the providers as a separate sub-network) and describe any restrictions imposed on members that use these sub-networks. This is particularly important since beneficiaries could choose their primary care physician without realizing that this choice restricts them to a specified group of specialists, ancillary providers, and hospitals. Organizations must also clearly

describe the process for obtaining services in these networks and sub-networks, including any referral requirements, as well as any out-of-network coverage or point-of-service option.

Medicare health plans may print a separate directory for each sub-network and disseminate this information to members in a particular sub-network. This practice is permissible, provided that the directory clearly states that a directory that lists providers for other networks is available and provides this information to members upon request.

Mailing the Provider Directory to Addresses with Multiple Members: With respect to the annual mailing of the directory, Medicare health plans have the option to either mail one directory to every member, or to mail one directory to every address where **up to four members** reside. (Keep in mind that individuals in, for example, apartment buildings, are only considered to be at the “same address” if the apartment number is the same.) Please note that every member must still receive his or her own directory at the time of enrollment.

If you choose to mail the directory to every address where up to four members reside, you must keep the following in mind:

- If a member at that address subsequently requests that you mail another copy of the directory, you must mail them a directory.
- When mailing a directory to one address, you should include the name of at least one of those individuals in the mailing address (however, we prefer that you include the names of all individuals, to prevent any members mistakenly believing that you failed to mail them a directory).

Provider Directory Change Pages: With respect to those members who choose to receive a hard copy directory as opposed to an electronic copy, Medicare health plans have the option to mail a complete directory to members, or to instead mail only change pages to members. (Note that the CMS still requires that every member receive a complete directory at the time of enrollment.) In addition, if at any time a member requests a complete directory, the organization must comply with the request.

If an organization chooses to send change pages to members, the following will also apply:

- In instances where significant changes to the provider network occur, the organization must send a special mailing of change pages immediately. In general, the organization can define “significant changes” when determining whether a special mailing is necessary. However, the CMS may also determine a mailing is needed and may direct the organization to conduct such a mailing.
- A new, complete provider directory must be mailed to all members at least every three years.

- Change pages may consist of the actual page being changed or a list of changes with referenced pages. Change pages must be dated.
- When sending out change pages, the organization must include a cover letter that explains that the member can receive a complete directory upon request. The organization should also include information on how to obtain provider network information on the Internet and/or by telephone. In addition, the first time the organization sends change pages the cover letter should explain that the organization will now be sending change pages to members, as opposed to a complete directory.

Please also refer to §40.1.C, Item #1, which contains more information regarding mailing of the Provider Directory.

40.3 - Specific Guidance About Drug Formularies (Rev.)

In providing a prescription drug benefit, a health plan/M+C organization may rely on a formulary. A formulary is a list of prescription drugs, grouped by therapeutic drug class. There are three categories of formularies: open, preferred, and closed. Open formularies list all drugs and drug products that are covered and do not place restrictions on coverage of drugs within each therapeutic class (i.e. the physician can order any one in the class). Preferred formularies are similar to open formularies, but also use incentives and interventions to encourage use of certain preferred drugs. Closed formularies use limited lists of drugs; enrollees pay penalties (sometimes the entire cost) for drugs not on the formulary.

Many health plans/M+C organizations make periodic changes to formularies or the items on preferred lists, often convening meetings of their pharmacy and therapeutics committees several times a year to add and remove items from the formulary or preferred list. When they enroll in a M+C plan, beneficiaries may not be aware that changes to formularies or preferred lists are likely to occur during the contract year.

Every health plan/M+C organization that covers outpatient prescription drug benefits (those not covered under the original Medicare fee-for-service program) must provide notice in its Evidence of Coverage (EOC) whether it uses a formulary or preferred list. If it uses formularies or preferred lists, the notice shall include:

- An explanation of what a formulary is;
- A statement that the formulary (or drugs on the preferred list) may change during the contract year;
- An estimate of how often the health plan/M+C organization reviews the contents of the formulary and makes changes based upon that review;

- A description of any process by which a prescribing provider may obtain authorization for a non-formulary or non-preferred list drug to be furnished under the same terms and conditions as drugs on the formulary or preferred list; and
- A statement that members may use health plan/M+C organization grievance and appeals process if they have complaints about the formulary or its administration.

In addition, health plans/M+C organizations that use formularies or preferred lists must disclose whether specific drugs are on the health plan/M+C organizations' formularies or preferred lists when enrollees or potential enrollees make telephone or other inquiries.

With respect to pre-enrollment marketing materials that describe plan benefits, health plans/M+C organizations must disclose whether a formulary or preferred list is used and that the formulary or list may change during the contract year and provide a contact number that the beneficiary can call for more information. This policy will be effective beginning in contract year 2001 and will be incorporated into the Model EOC for 2001.

40.4 – (Section Removed)

40.5 – Specific Guidance for the Standardized Summary of Benefits (Rev.)

The standardized Summary of Benefits (SB) is a stand-alone marketing document that is generated from the Plan Benefit Package. It is the primary pre-enrollment document used by M+C organizations to inform potential Medicare beneficiaries of plan benefit packages offered by M+C organizations.

40.5.1 – Summary of Benefits for Medicare+Choice Organizations (Rev.)

Medicare+Choice organizations and Demonstration projects are required to use a standardized SB.

A. General Instructions

1. M+C organizations must adhere to the language and format of the standardized SB and are only permitted to make changes if approved by CMS. Changes in the language and format of the SB template will result in the disapproval or delayed approval of the SB.
2. The title “Summary of Benefits” must appear on the cover page of the document.
3. All three sections of the SB must be provided together as one document and may not be bound separately or placed in a folder in separate sections. M+C

organizations may also describe several plans in the same SB package by displaying them in separate columns in the comparison matrix section of the SB.

4. Front and back cover pages are acceptable.
5. Printing font size of 12-point or larger must be used for the SB (including footnotes). **NOTE:** Since sections 1 and 2 will not be generated from the PBP in 12-point font, the M+C organization should change the font to ensure that the font size is 12 point. M+C organizations may enlarge the font size and also use bold or capitalized text to aid in readability, provided that these changes do not steer beneficiaries to, or away from any benefit items or interfere with the legibility of the document.
6. Colors and shading techniques, while permitted, must not direct a beneficiary to or away from any benefit items and must not interfere with the legibility of the document. There is no requirement regarding the type of paper used.
7. It is acceptable to print the SB in either portrait or landscape page format.
8. It is acceptable for M+C organizations with multiple plans and PBPs (separate ACRPs) to include more than one plan in the benefit comparison matrix (section 2). However, since the PBP will only print section 1 and 2 reports for one plan, the M+C organizations will have to create a side-by-side comparison matrix for two (or more) plans by manually combining the information into a chart format.
9. It is acceptable for M+C organizations to display more than one plan together in the same columns of the benefit comparison matrix, provided all of the benefits are the same and only the service areas are different. Plans may identify the service areas at the top of the plan column of section 2. **NOTE:** If anything beyond the service area is different, the plans must be displayed separately.
10. If the SB includes only one of several plans offered, the availability of other plans must be noted in the Annual Notice of Change (ANOC). If the M+C organization lists more than one plan offering, it is required to identify the specific plan in which the member is currently enrolled on the cover letter transmitting the SB.
11. If an M+C organization wants to include mandatory supplemental benefits beyond those benefits found in the benefit comparison matrix, the M+C organization must place the information in section 3 of the SB. The M+C organization must include a brief description of the benefits and any copay requirements.
12. If an M+C organization includes additional information about covered benefits in section 3, the M+C organization may include a page reference to this information in the appropriate box in the benefit comparison matrix using the following

sentence: “See page___ for additional information about (Enter the benefit category exactly as it appears in the left column).”

13. M+C organizations may include additional information about covered benefits in a separate flyer or other material and mail this with the standardized SB and the Annual Notice of Change Letter.
14. Enrollees whose source of enrollment is through an employer-sponsored group are not currently included in the mandated use of the standardized SB for either annual notification or initial marketing purposes.

B. Section 1 - Beneficiary Information Section

1. This section is incorporated into your SB exactly as it is generated by the PBP. **NOTE:** M+C organizations have the option of indicating at the top of this section a geographic name, for example, “Southern Florida.” If used, the geographic name must match the geographic label indicated in the Health Plan Management System (HPMS).
2. Section 1, as generated by the PBP, will include the applicable H number and plan number at the top of the document. M+C organizations must delete this information.
3. The fourth paragraph (How can I compare my options?) contains a sentence “We also offer additional benefits, which may change from year to year.” If this is not applicable to your plan, you must remove this sentence.
4. The second question and answer in section 1 includes the plan’s service area; the PBP will generate a list of counties, with an * indicating those counties that are partial counties. The M+C organization may list the zip codes of these counties in this section or provide a cross-reference in section 3 and list the zip codes here. The M+C organization must also explain in section 1 that the * indicates a partial county.
5. The second question and answer in section 1 lists the plan’s service area, but does not indicate that the information listed represents counties. Therefore, the M+C organization must amend the SB so that the answer reads, “The service area for this plan includes the following counties: [list of counties automatically generated by the PBP].”
6. The last sentence in section 1 on page 2 states, “If you have special needs, this document may be available in other formats.” M+C organizations contracting with CMS are obligated to follow the regulatory requirements of the American with Disabilities Act and the Civil Rights Act of 1964. Compliance with these requirements satisfies the intent of the above referenced SB sentence. No additional requirements are imposed by the above referenced SB sentence.

C. Section 2 - Benefit Comparison Matrix

The SB benefit comparison matrix will be generated by the PBP in chart format with the required language. Therefore, the information included in the PBP must first be correct in order for the SB comparison matrix to be correct. M+C organizations should review the comparison matrix to ensure that all of the information presented is correct. Information presented in the benefit comparison matrix must match the information presented in the PBP, with the exception of the permitted and/or necessary changes discussed below. If any changes are required, the M+C organization must make these changes in the PBP prior to the deadline date for submission of the ACRP, generate a revised SB benefit comparison matrix, and include this matrix in its SB.

If the M+C organization follows Option 1 of the streamlined marketing review process (as addressed in §20.3), then the CMS reviewer will have the benefit comparison matrix that is generated by the PBP and will compare this with the matrix provided as part of the plan's SB. Any discrepancies between the matrix generated by CMS and that provided by the plan (with the exception of those permitted below) will result in disapproval of the SB. If the M+C organization follows Option 2 of the streamlined marketing review process, this comparison will not occur during the review since CMS is not reviewing Section 2 of the SB.

D. Section 3 - Plan Specific Features

This section is limited to a maximum of six pages of promotional text and graphics and is not standardized with regard to format or content. The 6-page limit means that the information is limited to six single-sided pages or 3 double-sided pages. However, there is one exception to this limit:

- When an M+C organization is translating the SB to a foreign language, it may add pages as necessary to ensure the translation conveys the same information as the English language version.

Section 3 is used by the M+C organization to describe special features of the M+C organization beyond information contained in sections 1 and 2 of the SB. Section 3 may contain non-standardized language, graphics, pictures, maps, etc.

M+C organizations may use this section to further describe mandatory and optional supplemental benefits that appear in the benefit comparison matrix. If an M+C organization chooses to do this, they may reference the information in the relevant section of the benefit comparison matrix using the following sentence: "See page___ for additional information about (Enter the benefit category exactly as it appears in the left column.)" Section 3 is not intended to include a description of every plan benefit not included in Section 2 that has cost sharing associated with it.

E. Permitted Changes To SB Language and Format

M+C organizations are only permitted to make changes to the benefit matrix or Hard Copy Summary of Benefits on a limited basis. **Any changes** must be approved by CMS. Please refer to [§40.5.3](#) for further detail.

F. Footnotes

The comparison matrix generated by the PBP will contain the required footnotes in the benefit column for Original Medicare (OM). Therefore, the M+C organization must include the following footnotes provided below if they apply to the benefit. Please note that the footnote number must appear in the text of the column and the footnote must appear at the bottom of each page.

NOTE: For review purposes, the M+C organization can list all of the footnotes at the end of section 2, but the final proof copy must include the footnotes at the appropriate points in the text. If the M+C organization chooses this option, the M+C organization must notify the CMS Regional Office conducting the review and must indicate in the SB where the footnotes will actually appear in the final printed version.

1. Each year, you pay a total of one \$100 deductible.

This footnote must be referenced after every statement in the Original Medicare column that describes the required Medicare coinsurance, e.g., “You pay 20% of Medicare approved amounts.” The only exception where footnote (1) does not need to be referenced is mammograms, pap smears/pelvic exams and prostate cancer screening exams. If the footnote is applicable to the plan it must also be referenced in the Plan column. This footnote must also appear at the bottom of each page.

2. If a doctor or supplier chooses not to accept assignment, their costs are often higher, which means you pay more.

This footnote must be referenced after every statement in the OM column that describes the following benefits and after footnote (1), where applicable. The text of this footnote must appear at the bottom of each page.

3. A benefit period begins the day you go to the hospital or skilled nursing facility. The benefit period ends when you have not received hospital or skilled nursing care for 60 days in a row. If you go into the hospital after one benefit period has ended, a new benefit period begins. You must pay the inpatient hospital deductible for each benefit period. There is no limit to the number of benefit periods you can have.

This footnote must be referenced after the words “benefit period” in the OM column describing Inpatient Hospital Care and Skilled Nursing Facility and the

text of this footnote must appear at the bottom of the page on which these benefits are described. Additionally, if the footnote is applicable to the plan it must also be referenced in the Plan column.

4. Lifetime reserve days can only be used once.

This footnote must be referenced after the statement, “Days 91-150: \$ (The Medicare amount may change each year) each lifetime reserve days” in the OM column describing Inpatient Hospital Care. Additionally, if the footnote is applicable to the plan it must also be referenced in the Plan column. The text of this footnote must appear at the bottom of the page on which these benefits are described.

40.5.2 – Summary of Benefits for Cost Plans (Rev.)

Cost plans are not required to use the standardized Summary of Benefits, however they are required to provide members with an SB. If a cost plan intends to have the plan appear in Medicare Health Plan Compare and Medicare Personal Plan Finder, it will need to complete the Plan Benefit Package (PBP) to create a standardized SB. Cost plans that create a standardized SB should follow all instructions below.

Cost plans should follow all instructions outlined in §40.5.1 for M+C organizations. In addition, the following instructions are specific to cost plans.

A. General Instructions

1. The benefit description column and Original Medicare column must remain unchanged.
2. All sentences in the plan column of the matrix must be completed with applicable copays or coinsurance amounts.
3. Additional instructions provided in italicized text and in parentheses should be removed from the Summary of Benefits prior to submitting the document to CMS for review.
4. Unless otherwise indicated, cost plans should choose all of the applicable sentences in each category to describe their benefits.

B. Section 1- Beneficiary Information Section

For cost plans that are “closed” to new enrollment, the pre-enrollment language in section 1 will not apply. Therefore, these cost plans should include the following disclaimer in their ANOC. Any additional information regarding the contractor’s “closed status” should also be included in the cover letter.

The CMS requires the Summary of Benefits (SB) to be used in both pre-enrollment and annual notice of change (ANOC) functions. Plan member receiving the SB should disregard all pre-enrollment language.

C. Section 2 - Benefit Comparison Matrix

Cost plans may include the following footnote on each page of the benefit comparison matrix. The text of the footnote should appear at the bottom of every page.

If you go to a provider outside of [insert name of plan] who accepts Medicare patients, your coverage would be the same as Original Medicare. Original Medicare deductibles and coinsurance apply.

40.5.3 - Requests to Change Hard Copy Summary of Benefits (Rev.)

The CMS will allow an organization to make changes to hard copy SBs on a very limited basis. The organization must receive approval from the CMS Central Office prior to making any changes. Any approved changes will NOT result in changes in Medicare Personal Plan Finder, nor will they result in changes to the Plan Benefit Package. However, requests may be considered for future changes to the Plan Benefit Package.

What types of Changes will be Permitted?

The only changes that will be permitted are those that would correct inaccurate or misleading information presented to beneficiaries in the hard copy SB. For example, if a plan does not have a network, a change **may** be permitted to remove a sentence referring to the requirement that members see doctors within the plan's network.

What types of Changes will NOT be Permitted?

Requests for changes in which the existing sentences are accurate will not be permitted. MCOs will **NOT** be permitted to add additional sentences in Section 2 of the Summary of Benefits in order to further explain their benefits. The CMS will not allow changes in wording, based on individual preferences.

How to request a change?

To request a change to the hard copy SB, e-mail your request to SummaryofBenefits@cms.hhs.gov. The subject line in the request must read: "Hard Copy SB Change Request." In the request, provide:

1. The H number and Plan ID—each H number and Plan ID should be in a separate e-mail;

2. The Regional Office and Contact who review the MCO marketing material;
3. The existing standardized Summary of Benefits language;
4. An explanation of why the existing standardized language is inaccurate; and
5. A modified sentence.

How will CMS review the requests?

A cross-functional workgroup reviews each request. The workgroup will determine if the current standardized wording is inaccurate or misleading. If the workgroup denies the request, CMS will notify the MCO and the MCO must adhere to the standardized language. If the workgroup permits a change, CMS will notify the MCO with the approved language. Note that the approved language will be decided by CMS and will be considered “standardized.” The CMS will also notify the Regional Office of the approved language. If the request is based on a preferred wording, the request will not be approved.

40.6 – Specific Guidance on the Evidence of Coverage (Rev.)

All organizations are required to give an EOC to all members annually. They must also send new members an EOC no later than when they notify the member of acceptance (confirmation) of enrollment (the time frame requirements for sending notice of acceptance of enrollment are contained in Chapter 2, Section 40.4.2). These requirements apply to all plan members, including employer group members. CMS provides a model EOC for HMOs, PPOs, and Medicare cost plans under separate cover.

In addition to the guidance provided in section 40.1 and section 40.3, the following information must be contained in the EOC:

Lock-In Requirements/Selecting a Primary Care Physician - How to Access Care in the plan

Medicare health plans must describe rules for receipt of primary care, specialty care, hospital care, and other medical services in their EOC. The EOC must:

- Disclose specific rules for referrals for follow-up specialty care.
- HMOs: Explain that when a beneficiary enrolls in a plan, he/she agrees to use the network of physicians, hospitals, and providers that are affiliated with the plan for all health care services, except emergencies, urgently needed care, or out-of-area renal dialysis services.

- Explain that use of non-plan or non-preferred providers is allowed, but may cost more to the beneficiary (this requirements applies to PPOs and POS plans and, if appropriate, Visitors Programs for any plan type).
- Explain the impact of using the Medicare card for out-of-plan utilization that is not an emergency or urgent care.
- Explain that a plan member selects a primary care physician (PCP) to coordinate all of the member's care. A PCP is usually a family practitioner, general practitioner, or internist. The PCP knows the plan's network and can guide the member to plan specialists when needed. The member always has the option to change to a different PCP. Changes in PCP will be effective according to the plan guidelines that, in some instances, could be the first or the 15th day of the following month as opposed to immediately. (This requirement does not apply to PPOs or PFFS plans that do not use PCPs.)
- For HMOs, explain that neither the M+C organization nor Medicare will pay for medical services that the member receives outside of the network unless it was authorized, or it is an emergency, urgently needed care, or out-of-area dialysis service. The member may be responsible for paying the bill.
- For PPOs, explain that with the exception of emergency or urgent care, it may cost more to get care from non-plan or non-preferred providers.
- Explain prior authorization rules for any in or out-of-network services and describe other review requirements that must be met in order to ensure payment for the services
- For Medicare cost plans, enrollees must be informed that after enrollment is effective, in order for them to receive the full coverage offered, services other than emergency and urgently needed services must be obtained through the HMO or CMP. In the case of cost enrollees, however, they may receive services that are not provided or arranged by their HMO or CMP, but they would be responsible for payment of all Medicare deductibles and coinsurance as well as any additional charges as prescribed by the Medicare program. They also would be liable for any charges not covered by the Medicare program.

Emergency Care

EOCs must describe rules for emergency care and post-stabilization care. In particular, they must:

- Explain that members are not required to go to health plan-affiliated hospitals and practitioners when they experience an emergency.

- M+C organizations: Define the term “Emergency medical condition (this definition can be found in Chapter 4).
- Define the term “Emergency services” (M+C organizations can find this definition in Chapter 4; Medicare cost plans can refer to 42 CFR 417.401.)
- Describe rules and coverage for post-stabilization care. M+C organizations can refer to Chapter 4 and [42 CFR 422.113\(b\)\(3\), \(c\)\(2\)\(i\) through \(iii\)](#) for more information on responsibility for emergency care and stabilization and post-stabilization requirements.
- Describe precisely where emergency coverage will be available under the organization (e.g., the United States and its Territories, worldwide, etc.).

Urgent Care

EOCs must describe rules for urgent care. In particular, they must:

- Define “urgently needed services” (for M+C organizations, this definition can be found in Chapter 4, for Medicare cost plans, it is in 42 CFR 417.401).
 - Explain that urgently needed care provided by non-plan providers is covered when a member is in the service area or M+C continuation area under the unusual circumstance that the organization’s provider network is temporarily unavailable or inaccessible. Normally, if a member needs urgent care and is in the organization’s service area or M+C continuation area, the member is expected to obtain care from the organization’s providers.

Appeal Rights

EOCs must describe the appeals process and rights to appeals. In particular, they must explain that members have a right to appeal any decision the organization makes regarding, but not limited to, a denial, termination, payment, or reduction of services. This includes denial of payment for a service after the service has been rendered (post-service) or denial of service prior to the service being rendered (pre-service). For more information on appeals, M+C organizations can refer to Chapter 13.

Optional supplemental benefits cannot be appealed for Medicare cost plans. Therefore, Medicare cost plans must explain that complaints about Optional supplemental benefits are handled through the grievance process.

Benefits, Plan Premium and Billing Information

EOCs must describe benefit and plan premium information. In particular, they must:

- Include the statement: “You must continue to pay your Medicare Part B premium” with premium information, even if the plan premium is \$0.
- When specifying benefits, specify annual limits (e.g., \$1,000 annual maximum for prescription drugs), annual benefit payout (e.g., \$700 for eyeglasses every 2 years) and applicable copayments (e.g., \$5 copayment for a doctor visit).
- Clearly state major exclusions and limitations. For example, restriction of pharmacy benefits to a specific formulary or a restricted set of pharmacies must be explained.
- Clearly state all monetary limits, as well as any restrictive policies that might impact a beneficiary’s access to drugs or services.
- When annual dollar amounts or limits are provided, also mention the applicable quarterly or monthly limits, and whether any unused portion of that benefit can be carried over from one calendar quarter to the next.
- Make the statement that the M+C organization’s contract with CMS is renewed annually, and that the availability of coverage beyond the end of the current contract year is not guaranteed.
- Provide instructions to enrollees that, in cases where non-contracting providers submit a bill directly to the enrollee, the enrollee should not pay the bill, but submit it to the M+C organization for processing and determination of enrollee liability, if any.

For more information on benefits, premiums and cost sharing, refer to Chapters 4 and 8.

50 - Guidelines for Promotional Activities (Rev.)

This section reviews the use of promotional activities relating to the enrollment and retention of members. Section 50.1 of this section provides general guidance about promotional activities, while §50.2 provides specific guidance for provider promotional activities. Section §50.3 describes CMS’ policy with respect to the use of independent insurance agents for marketing purposes. Section 50.4 answers some frequently asked questions regarding all aspects of promotional activities.

50.1 – General Guidance About Promotional Activities (Rev.)

Promotional activities (including provider promotional activities) must conform to the requirements of [§§1128A\(a\)\(5\)](#) and [1128B\(b\)](#) of the Act. Section 1128A(a)(5) of the Act provides for a civil monetary penalty against a person or entity that offers or transfers remuneration to a Medicare or Medicaid eligible individual that the person or entity knows or should know is likely to influence such eligible individual to receive or order services from a particular provider. Section 1128B(b) of the Act, the Medicare and Medicaid anti-kickback statute, prohibits the offering or giving of remuneration to induce the referral of a Medicare or Medicaid beneficiary, or to induce a person to purchase, or arrange for, or recommend the purchase or ordering of an item or service paid in whole or in part by the Medicare or Medicaid programs. Additional prohibitions on the offering of monetary rebates or inducements of any sort to enrollees are contained in [§1854\(d\)](#) of the Act.

50.1.1 – Nominal Gifts (Rev.)

Many health plans/M+C organizations offer gifts to potential enrollees if they attend a marketing presentation. This is permitted as long as such gifts are of nominal value and are provided whether or not the individual enrolls in the health plan/M+C organization. Nominal value is defined as an item worth \$15 or less, based upon the retail purchase price of the item. Local Medicare fee-for-service fiscal intermediary and/or carrier charge listings can be used to determine the value of medical services, examinations, laboratory tests, etc., associated with nominal value determinations in marketing scenarios. Cash gifts are prohibited including charitable contributions made on behalf of people attending a marketing presentation, and including gift certificates that can be readily converted to cash, regardless of dollar amount. The dollar amount associated with the definition will be periodically reassessed by CMS. An organization may offer a prize of over \$15 to the general public (for example, a \$1,000 sweepstakes on its corporate Web site) as long as the prize is offered to the general public and not just to Medicare beneficiaries. When the whole company is offering a prize to individuals well beyond only Medicare individuals, and that prize does not relate to a specific inducement to enroll in company products, the company should not exclude anyone with Medicare from being able to win the prize.

50.1.2 - Referral Programs (Rev.)

The following general guidelines apply to referral programs under which Medicare health plans solicit leads from members of new enrollees. These include gifts that would be used to thank members for devoting time to encouraging enrollment. Gifts for referrals must be available to all members and cannot be conditioned on actual enrollment.

- Medicare health plans may not use cash promotions as part of a referral program.

- Medicare health plans may offer thank you gifts of less than \$15 nominal value (e.g., thank you note, calendar, pen, key chain) when an enrollee responds to a plan solicitation for referrals. These thank you gifts are limited to one gift per member, per year.
- A letter sent from the Medicare health plan to members soliciting leads cannot announce that a gift will be offered for a referral.
- An organization can ask for referrals from active members, including names and addresses, but cannot request phone numbers. Medicare health plans can then use this information for soliciting by mail.

50.1.3. – Health Fairs and Health Promotional Events (Rev.)

Many health plans/M+C organizations are interested in offering health fairs or social events that promote health awareness and a sense of belonging among seniors. Health plans/M+C organizations may participate in such events as either the sole sponsor of the event or as a member of a multiple-sponsor event. Application of the following CMS policies to the condition of sponsorship is indicated by **(Sole-Sponsor)** for sole sponsor events, **(Multiple-Sponsor)** for multiple-sponsor events, and **(Both)** where the policy applies to both single and multiple sponsor events. If an audience is comprised of the general public as well as Medicare beneficiaries, the following policies apply to the entire audience:

- Such events should be social and should not include a sales presentation. **(Both)** Response by a health plan/M+C organization representative to questions will not be considered a sales presentation if no enrollment form is accepted at the event. **(Both)**
- Advertisements for the event can be distributed to both members and non-members. **(Both)**
- The value of any give-away or free items (e.g., food, entertainment, speaker) cannot exceed \$15 per attending person. For planning purposes, event budgets can be based on projected attendance. The cost of overhead for the event (e.g., room rental) is not included in the \$15 limit. **(Both)**
- Pre-enrollment advertising materials (including enrollment forms) can be made available as long as enrollments are not accepted at the event. **(Both)**
- If offered, door prizes/raffles cannot exceed the \$15 limit. **(Sole-Sponsor)** However, door prizes/raffles can exceed the \$15 limit if a health plan/M+C organization contributes to a pool of cash for prizes or contributes to a pool of prizes such that the prize(s) is not individually identified with the health plan/M+C organization, but is identified with a list of contributors. A jointly-sponsored event may consist of the health plan/M+C organization and one or

more sponsor participants who are not contracting providers with the health plan/M+C organization. A health plan/M+C organization may also contribute cash toward prize money to a foundation or another entity sponsoring the event. For example: A radio station, along with many sponsors, puts together a seniors fair. Anyone who attends may register for the door prize: a get-away weekend. The health plan/M+C organization may participate in the fair, contribute to the door prize, and permit attendees to register for the prize at its booth (as well as other sponsor booths). However, the health plan/M+C organization cannot claim to be the sole donor of the prize. It must be clear that the prize is attached to the seniors fair. No sales presentation may be made at the event. (Multiple-Sponsor)

50.1.3.1 – Employer Group Health Fairs - (Rev.)

Enrollment restrictions (i.e., no sales presentations can be made or enrollment applications accepted at the meeting) do not apply to health fairs or other promotional events sponsored by an employer group or labor organization so long as the following requirements are met:

1. The meeting must be held solely for retirees and any active employees (and their spouses/interested decision makers) from the employer/labor organization. No “general public” persons may be solicited or invited to attend the meeting; and
2. The meeting may not be announced via “public media” vehicles. Potential employer group/labor organization retirees must be notified of the meeting by individual notification or by company/labor organization sponsored media such as a newsletter or similar targeted mailing/vehicle.

50.1.3.2 – CMS-Sponsored Health Information Fairs - (Rev.)

The Centers for Medicare & Medicaid Services is required to conduct a nationally coordinated education and information campaign to inform Medicare+Choice eligible individuals about Medicare+Choice plans and the election process provided under the law for enrolling in Medicare+Choice plans. One of the coordinated education and information campaign activities is CMS sponsorship of Medicare+Choice Health Information Fairs.¹⁶ While most CMS-sponsored M+C Health Fairs will be conducted immediately before and during the month of November each year (the Annual Election Period), occasionally CMS will sponsor Health Fairs as early as September and other times of the year. The following rules and procedures apply to CMS-sponsored Health Fairs, whenever they occur.

CMS will invite the M+C organizations to participate in the planning of local Health Fairs. M+C organization participation is optional, but it is important to get current contractors to the planning table. It is imperative that all CMS regions are consistent in

applying participation guidelines at these **CMS-Sponsored** Health Fairs. Below are the guidelines. The CMS retains the right to modify these guidelines if CMS encounters a new situation that must be addressed.

50.1.3.3 - Allowable Actions for Medicare + Choice Organizations - (Rev.)

Medicare + Choice Organizations may do the following:

- Assist in the planning of local Health Fairs;
- Distribute health plan brochures and application forms, while at the Health Fair. ¹⁷ They may also include in their handouts a reply card which may be given to interested beneficiaries for return to the organization via mail;
- Have a booth at the Health Fair;
- Distribute items with a total retail value of no more than \$15. These items **MUST** be offered to everyone, (e.g., organizations can not give gifts to only those individuals who show interest;
- Have any personnel present (i.e. marketing personnel, customer service personnel) as long as they adhere to these guidelines;
- Contribute funding for any Health Fair costs (i.e. purchasing of food; drawings, raffles, or door prizes for attendees which exceed the \$15 nominal value requirement) as long as the recognition of the donation is to a number of entities (not just one particular M+C organization); and
- Market multiple lines of business in Medicare + Choice.

Medicare+Choice Organizations may not do the following:

- Give sales presentations;
- Collect enrollment applications. (Although application forms may be distributed, they may not be collected during CMS-sponsored Health Fairs);
- Collect names/addresses of potential enrollees. However, as noted above, they may distribute application forms and reply cards;
- Compare their benefits against other health plans. However, they may use comparative information which has been created by CMS (such as information from CMS's Web site) or information/materials which have been approved by CMS (i.e. the standardized Summary of Benefits);
- Third party created materials may not be used, unless they have been approved by CMS in advance; and
- Give individual gifts with a retail value of more than \$15.00.

50.2 - Specific Guidance About Provider Promotional Activities (Rev.)

Some Medicare health plans use their providers to help them market their Medicare product. As used in this chapter, the term “provider” means all Medicare health plan-contracting health care delivery network members; e.g., physicians, hospitals, etc. The purpose of this section is to specify what marketing practices in this area meet both CMS requirements and the needs of the Medicare health plans with respect to entities considered providers by Medicare health plans.

In general, providers should only market in their capacity as a member of the plan’s network and only in coordination with the Medicare health plan (for example, providers/provider groups could co-sponsor an open house or a health fair with a Medicare health plan, or could cooperatively advertise on TV).

Marketing by a plan provider shall be deemed to be marketing by the Medicare health plan. Therefore, Medicare health plans should stipulate in their contracts with providers that any coordinated marketing to be carried out by the provider must be done in accordance with all applicable CMS marketing guidelines. All marketing materials describing the Medicare health plan in any way must have the Medicare health plan’s name or logo as well as the provider’s/provider group’s name or logo and adhere to the guidelines in this chapter. Refer to section 60.3.1 for information about approval of provider marketing materials (benefit-providing third party marketing materials).

The CMS is concerned with provider marketing for the following reasons:

- Providers are usually not fully aware of all Medicare health plan benefits and costs; and
- A provider may confuse the beneficiary if the provider is perceived as acting as an agent of the Medicare health plan vs. acting as the beneficiary’s provider.

Providers may face conflicting incentives when acting as a Medicare health plan representative since they know their patients’ health status. Desires to either reduce out-of-pocket costs for their sickest patients, or to financially gain by enrolling their healthy patients may result in recommendations that do not address all of the concerns or needs of a potential Medicare health plan enrollee.

There are some permissible delegated provider marketing activities, however. Listed below are some requirements for these, and the reasons they are permitted:

1. **Health Fairs** - At health fairs, provider groups and individual providers can give out Medicare health plan brochures including enrollment applications. Because they may not be fully aware of all benefits and costs of the various Medicare health plans, providers or their representatives cannot compare benefits among Medicare health plans in this setting. In addition, applications may not be taken at

health fairs. (See the discussion of health fairs and health promotion events in §50.1.3 above.)

- 2. Provider Office Activities and Materials** - In their own offices, physicians and other health care providers can give out Medicare health plan brochures, and posters announcing plan/organization affiliation. However, they cannot give out or accept applications. Providers cannot offer inducements to persuade beneficiaries to join Medicare health plans or to steer beneficiaries to a specific Medicare health plan.

While providers are prohibited from giving and accepting applications in the health care setting, the Medicare health plans and provider representatives may conduct sales presentations and give and accept applications in health care settings as long as the activity takes place in the common areas of the setting, and as long as patients are not misled or pressured into participating in such activities. Common areas, where marketing activities are allowed, would be areas such as hospital cafeterias, community or recreational rooms, and conference rooms.

Regulations prohibit sales presentations and the acceptance of applications in areas where patients primarily intend to receive health care services. These restricted areas would include, but not be limited to, waiting rooms, exam rooms, nursing resident rooms, and hospital (patient) rooms.

In addition, providers cannot offer anything of value to induce Medicare health plan enrollees to select them as their provider. When patients seek information or advice from their own physician regarding their Medicare options, physicians may engage in this discussion. Because physicians are usually not fully aware of all Medicare health plan or Original Medicare benefits and costs, they are advised to additionally refer their patient to other sources of information, such as 1-800-MEDICARE, the State Health Insurance Assistance Program, and/or specific health plan/M+C organization marketing representatives. Additional information can also be found on CMS' Web site, <http://www.medicare.gov/>. Physicians are permitted to printout and share information with patients from CMS' Web site.

- 3. Providers/Provider Group Affiliation Information**- Providers/provider groups can announce a new affiliation with a Medicare health plan to their patients. An announcement to patients of a new affiliation which names only one Medicare health plan may occur only once. Additional contacts from providers to their patients regarding affiliation must include all the Medicare health plans with which the provider contracts. This includes, for example, annual affiliation announcements, announcements that certain affiliations have terminated, and the display of Medicare health plan brochures/posters. If these communications describe Medicare health plans in any way (as opposed to just listing them), they must be prior approved by CMS (see below).

4. **Providers/Provider Group Comparative/Descriptive Information -**
Providers/provider groups may provide printed information to their patients comparing the benefits of different Medicare health plans with which they contract. Such materials must have the concurrence of all Medicare health plans involved and must be prior approved by CMS. The Medicare health plans may want to determine a lead Medicare health plan to coordinate submission of these materials. CMS continues to hold the Medicare health plans responsible for any comparative/descriptive material developed and distributed on their behalf by their contracting medical groups and other health care providers. The providers/provider groups may not health screen when sending out such information to their patients. The reason for this is that any material sent to beneficiaries that talks about Medicare health plans is marketing and health screening is a prohibited marketing activity.

5. **Providers/Provider Group Web Sites -** Providers/provider groups may provide links to Medicare health plan enrollment applications and/or provide downloadable enrollment applications as long as the site provides the links/downloadable formats to enrollment applications for all Medicare health plans with which the provider/provider group participates.

The “**Medicare and You**” Handbook or “**Medicare Compare Information**” (from CMS’ Web site, www.medicare.gov), may be distributed by providers/provider groups without additional approvals. There may be other documents that provide comparative/descriptive material about health plans, are of a broad nature, and are written by CMS or have been prior approved by CMS. These materials may be distributed by Medicare health plans and providers without further CMS approval. Please advise your Medicare health plan providers and provider groups of the provisions of these rules.

50.3 - Specific Guidance About the Use of Independent Insurance Agents (Rev.)

The CMS recognizes that independent insurance agents can provide a necessary service to Medicare beneficiaries and potential enrollees. They can also be a valuable resource in helping to reach low-income and rural populations, persons with disabilities, and other special populations. Therefore, CMS urges Medicare health plans to consider requiring specific cost/M+C training for their contracted agents. This will ensure that appropriate information is being delivered to Medicare beneficiaries and potential enrollees.

Please note that CMS is aware that sales by independent insurance agents are typically tied to compensation, and that agents are often given incentives to steer enrollees towards the carrier offering the most compensation. Further, independent insurance agents may be in a unique position to “cherry pick,” given their often longstanding relationships with clients.

Marketing by an independent insurance agent shall be deemed to be marketing by the Medicare health plan. Therefore, Medicare health plans should stipulate in their contracts with independent insurance agents that any coordinated marketing to be carried out by the agent must be done in accordance with all applicable CMS marketing guidelines. Refer to section 60.3.2 for information about approval of marketing materials prepared by independent insurance agents (non-benefit-providing third party marketing materials).

50.4 - Answers to Frequently Asked Questions About Promotional Activities

(Rev.)

1. **Q** - We purchased books on health maintenance that we plan to give away to anyone attending one of our marketing presentations, regardless of whether or not they enroll in our Medicare health plan. Because we purchased a large number of these books, we were able to buy them at a cost of \$14.99 per book. However, on the inside jacket, the retail price is shown as \$19.99. May we give these books away at our marketing presentation?

A - No. The retail purchase price of the book is \$19.99, which exceeds CMS' definition of nominal value.

2. **Q** - We are participating in a health fair during which we will have marketing staff present. During the fair, we will offer a number of free health screening tests to people who attend. The value of these tests, if purchased, would be considerably more than \$15. Is this permissible?

A - No. You may not offer these tests for free because their value exceeds CMS' definition of **nominal** value.

3. **Q** - At our Medicare health plan, we offer gifts of nominal value to people who call for more information. We then offer additional gifts if they come to marketing events. Each of the gifts meets CMS' definition of nominal value, but taken together, the gifts are more than nominal value. Is this permissible?

A - Yes.

4. **Q** - Listed below are some possible promotional items to encourage people to attend marketing presentations. Are these types of promotions permissible?

- Meals
- Day trips
- Magazine subscriptions
- Event tickets

- Coupon book (total value of discounts is less than \$15)

A - Yes. All these promotional items are permissible as long as they are offered to everyone who attends the event regardless of whether or not they enroll and as long as the gifts are \$15 or less. Cash gifts are prohibited including charitable contributions made on behalf of people attending a marketing presentation, and including gift certificates that can be readily converted to cash, regardless of dollar amount.

5. **Q -** Can a Medicare health plan advertise eligibility for a raffle or door prize of more than nominal value for those who attend a marketing presentation if the total value of the item is less than \$15 per person attending?

A - No. You cannot have a door prize of more than nominal value. Such gifts or prizes are prohibited by CMS. However, the raffle or door prize can exceed the \$15 limit if the organization is jointly sponsoring the prize with other Medicare health plans at a health fair. See §50.1 for a discussion of rules pertaining to health fairs.

6. **Q -** What about post-enrollment promotional activities? Are there any rules prohibiting such items or activities as coupon books, discounts, event tickets, day trips, or free meals to retain enrollees?

A - Currently, the Medicare Managed Care Manual states that Medicare health plans may not offer post-enrollment promotional items that in any way compensate beneficiaries for lower utilization of services. Any promotional activities or items offered by Medicare health plans, including those that will be used to encourage retention of members, must be of nominal value, must be offered to all eligible members without discrimination, and must not be in the form of cash or other monetary rebates. The same rules that apply to pre-enrollment promotional activities apply to post-enrollment promotional activities.

7. **Q -** Can Medicare health plans provide incentives to current members to receive preventive care and comply with disease management protocols?

A - Yes, as long as the incentives are:

- Offered to current members only;
- Not used in advertising, marketing, or promotion of the Medicare health plan;
- Provided to promote the delivery of preventive care; and
- Are not cash or monetary rebates.

NOTE: If these products are in the CMS approved contracted M+C organization benefit package (ACR and PBP) under “Preventive Services,” the provision of such incentives are within the purview of the medical management philosophy of the M+C organization and do not require additional review by CMS for marketing accuracy/compliance. The nominal value rule **does not** apply.

8. **Q** - Can a Medicare health plan offer reductions in premiums or enhanced benefits based on the length of a Medicare beneficiary’s membership in the Medicare health plan?
- A** - No. Longevity of enrollment is not a basis for reductions in premium or enhanced benefits. ¹⁸
9. **Q** - Can a Medicare health plan provide discounts to beneficiaries who prepay premiums for periods in excess of 1 month?
- A** - No. Medicare health plans cannot provide any discounts to Medicare beneficiaries for prepayment of premiums in excess of 1 month.
10. **Q** - Can a Medicare health plan take people to a casino or sponsor a bingo night at which the member’s earnings may exceed the \$15 nominal value fee?
- A** - No. The total value of the winnings may not exceed \$15 and the winnings **cannot be in cash or an item that may be readily converted to cash.**
11. **Q** - Can Medicare health plans send a \$1 lottery ticket as a gift to prospective members who request more information?
- A** - Offering a \$1 lottery ticket to prospective members violates the “no cash or equivalent” rule discussed above, whether or not the person actually wins since, generally, the “unscratched” ticket has a cash value of \$1.
12. **Q** - Can Medicare health plans pay beneficiaries that sign up to be “ambassadors” a flat fee for transportation?
- A** – The Medicare health plan may reimburse the beneficiary for any actual, reasonable transportation costs but must not pay the beneficiary a flat fee for transportation. If the Medicare health plan employs a beneficiary to be an “ambassador” and travel reimbursement is part of the employment compensation, then CMS has no oversight over this issue.
13. **Q** - Can Medicare health plans that own nursing homes conduct health fairs and distribute enrollment forms to nursing home residents?

A - Yes, organizations that own nursing homes may conduct health fairs and distribute enrollment forms if the sales presentations are confined to a common area (i.e., community or recreational rooms) or if a member volunteered for an individual presentation. Promotional activities and sales presentations cannot be made in individual resident rooms without a prior appointment for a “home” visit. Such activities would be considered door-to-door solicitation and are prohibited. The organization is required to meet all health fair/sales presentation and enrollment requirements as currently outlined in this chapter and regulations.

14. **Q** - Can physician groups that contract with Medicare health plans hire marketing firms to cold call from non-Medicare health plan member listings?

A - Yes, as long as the marketing guidelines for provider marketing are followed.

15. **Q** – Can Medicare health plans obtain leads from providers?

A – Yes, a provider may provide lists of their patients to Medicare health plans for marketing purposes. However, the CMS prefers that these lists be complete patient lists (for example, not just lists of patients over 65) in order to prevent health care screening. The list may contain contact information (name, address, phone number) but must not contain health/health status information. The provider is responsible for ensuring that it does not violate any HIPAA rules prior to providing such lists to the organization.

60 - Other Marketing Activities **(Rev.)**

This section outlines requirements for a variety of marketing activities. In particular, this section is divided into four sub-sections:

60.1 – provides requirements for value-added items and services

60.2 – provides requirements for marketing multiple lines of business

60.3 – provides requirements for review of third party marketing materials

60.4 – provides requirements for marketing to non-English speaking populations

60.1 – Specific Guidance About Value-Added Items and Services **(Rev.)**

Value-Added Items and Services (VAIS) are items and services offered to M+C plan enrollees, by an M+C organization, that do not meet the definition of “benefits” under the M+C program and may not be funded by Medicare program dollars. Nonetheless, VAIS may be of value to some beneficiaries, and we do not wish to deprive Medicare enrollees of access to items and services commonly available to commercial enrollees. Examples of VAIS may include, but are not limited to discounts in restaurants, stores, entertainment, and travel or discounts on health club memberships and on insurance

policy premiums. The CMS permits VAIS to be offered to M+C enrollees under the rules outlined below.

The VAIS are partly defined by what they are not - they are not benefits under the M+C program. The M+C regulations at [42 CFR 422.2](#) define benefits using a three-prong test:

1. Health care items or services that are intended to maintain or improve the health status of enrollees;
2. The M+C organization must incur a cost or liability related to the item or service and not just an administrative cost; and
3. The item or service is submitted and approved through the Adjusted Community Rate (ACR) process.

All three parts of the definition must be met for an item or service to be considered a benefit under M+C. If an item or service fails to meet one or more of these parts, it is not a benefit. However, it may be offered to M+C enrollees as a VAIS, subject to the restrictions that follow.

The following examples demonstrate the application of the three-prong test:

Example 1:

An M+C organization arranges for its enrollees a discount on all daily supplements purchased from a health food chain. The health food chain does not charge the M+C organization for this discount, and requires the M+C organization to develop a verification system so the health food chain can identify the organization's enrollees. The M+C organization incurs an administrative cost to develop the verification system, but does not incur a cost of providing or furnishing the daily supplement. Therefore, the discount on daily supplements would be considered a VAIS. The ACR submitted by the M+C organization may not reflect (as a Medicare enrollee benefit cost) the administrative cost.

Example 2:

An M+C organization arranges for its enrollees a 10 percent discount on eyeglasses purchased from a group of eye doctors. The physician group charges the M+C organization for the group's cost to administer the program, and requires the M+C organization to develop a verification system to identify the organization's enrollees. The M+C organization incurs two costs:

1. The M+C organization pays the physician group's administrative cost of administering the program; and

2. The M+C organization incurs the administrative cost for developing and providing the verification system.

Both of these costs are administrative in nature, and the M+C organization does not incur a cost of providing or furnishing the eyeglasses. Therefore, the discount on eyeglasses is considered a VAIS. The ACR submitted by the M+C organization should not reflect (as a Medicare enrollee benefit cost) either of the two administrative costs.

Example 2a:

Given the same circumstances outlined in Example 2 above, except, the amount paid to the physician group by the M+C organization includes an amount for the cost of the eyeglasses. In this case, the M+C organization does incur a cost of providing or furnishing the eyeglasses. Therefore, the 10 percent discount on eyeglasses is not considered a VAIS. The ACR submitted by the M+C organization should reflect the administrative costs it incurs and the amount paid to the physician group. The marketing materials should describe the eyeglass benefit with a 90 percent coinsurance. As with all benefits offered as part of an M+C plan, the Medicare enrollee must be afforded appeal rights for this benefit.

**60.1.1 - Restrictions on Value-Added Items and Services
(Rev.)**

The M+C organizations may make VAIS available to Medicare enrollees in accordance with the following guidelines:

1. VAIS must be offered uniformly to all M+C plan enrollees and potential enrollees.
2. M+C organizations may not describe VAIS as benefits. In accordance with [42 CFR 422.80\(e\)\(iv\)](#), which states that M+C organizations may not engage in activities that could mislead or confuse Medicare beneficiaries, the M+C organization may not claim or imply that the VAIS are recommended by or endorsed by CMS or Medicare.
3. The M+C organization must maintain confidentiality of enrollee records in accordance with [42 CFR 422.118](#) and other applicable statutes and regulations. The use or distribution of information about enrollees for non-plan purposes is prohibited. The M+C organization is thus prohibited from selling names, addresses, or information about the individual enrollees for commercial purposes. If the M+C organization uses a third party to administer VAIS, the M+C organization is ultimately responsible for adhering to and complying with confidentiality requirements.

60.1.2 - Relationship of Value-Added Items and Services to Benefits and Other Operational Considerations - (Rev.)

Health plans/M+C organizations can market, either through oral presentations or written materials, Value-Added Items and Services (VAIS). Organizations can also mention VAIS in their newsletters. With one exception, VAIS may not appear in the PBP or the Standardized SB. The exception is with the discount prescription drug program, which can be mentioned in section 3 of the SB as long as they include the required disclaimers.

In addition, the SB must clearly state (in the location that the program is described) that the discount prescription drug program will be available for the entire contract year. Any description of VAIS must be preceded by the following prominently displayed language:

“The products and services described below are neither offered nor guaranteed under our contract with the Medicare program. In addition, they are not subject to the Medicare appeals process. Any disputes regarding these products and services may be subject to the [Name of plan] grievance process.”

Organizations may include VAIS along with their ANOC and/or SB in one bound brochure as long as the value-added services are clearly distinct from the ANOC and/or SB (such as on a different color piece of paper), and the information on value-added services includes all the disclaimers required in this chapter.

Because VAIS does not meet the definition of a benefit under the M+C program, neither “benefit” nor associated administrative costs may appear in the ACR. Furthermore, because they are not contained within the contracted health benefits package, these services are not subject to the Medicare appeals process. VAIS may not be described in Medicare Compare or the "Medicare and You" handbook.

The CMS will not require prior approval of materials describing VAIS, since VAIS are not benefits as described within CMS regulations and therefore are not technically within CMS purview. The CMS will review these materials on monitoring visits to ensure compliance with these requirements. The CMS may initiate a monitoring visit if it becomes aware that materials have been distributed describing VAIS without the appropriate disclaimers or in violation of the requirements stated herein. CMS will also investigate complaints by beneficiaries regarding VAIS, just as it would other possible violations of CMS requirements.

60.1.3 - Value-Added Items and Services Provided by Employer Groups - (Rev.)

Value-added items and services may be offered to employer groups. Value-added items and services are offered outside the core benefit package, thus they are outside of CMS’ purview.

60.1.4 – Application to Section 1876 Cost Plans - (Rev.)

Value-added items and services may be offered by [§1876](#) cost plans. However, VAIS are non-covered services for which §1876 cost plans are not reimbursed

60.2 - Marketing of Multiple Lines of Business (Rev.)

M+C organizations may market multiple lines of business in accordance with the following.

Direct mail: Direct mail health plan/M+C organization marketing materials sent to current members describing other lines of business should contain instructions describing how individuals may opt out of receiving such communications. Health plan/M+C organizations need not describe this opt-out provision in every piece included in the direct mailing, but they must include it on at least one piece in each direct mailing they conduct. Health plan/M+C organizations should make reasonable efforts to ensure that all individuals (including non-members) who ask to opt out of receiving future marketing communications, are not sent such communications.

NOTE: These instructions regarding "opting out" of receipt of direct mail apply only to information that does not require prior authorization, as discussed in [§60.2.1](#). With one exception (mentioned below), health plans/M+C organizations may advertise multiple lines of business in direct mail marketing materials within the same document as the one that is advertising the plan product, as long as the non-plan lines of business are clearly and understandably distinct from the plan product. For example, the document might highlight the name of the plan product in bold and underlined font and then include a paragraph to describe the product in "regular" font, then it would go on to highlight the name of a Medigap product in bold and underlined font followed by a paragraph describing the Medigap product in "regular" font. Please keep in mind that the direct mail materials advertising multiple lines of business still should allow the beneficiary the choice of opting out of receiving future notices about non-M+C products. Also, if a health plan/M+C organization advertises non-plan products with a plan product, it must pro-rate any costs so that costs of marketing non-plan products are not included as "plan-related" costs on Adjusted Community Rate (ACR) proposal submissions.

Organizations that offer more than one type of Medicare+Choice products (HMOs, PPOs) may market all of the products as a "family of products." In this case, the marketing materials must clearly distinguish between the type of product, eligibility requirements, how to obtain services (lock-in, preferred vs. non-preferred benefits), and any out-of-pocket maximums, and specify the benefits to which they apply. Furthermore, multiple product advertising may only be conducted in areas where those products share service areas. We recognize that service areas may not perfectly align. When this occurs,

the M+C organization should make a reasonable effort to market the “family of products” only in counties that all products share.

Direct Mail Exception

While health plans/M+C organizations may mention non-plan lines of business at the time they send a plan nonrenewal notice, they may only do so using separate enclosures in the same envelope. Health plans/M+C organizations must not include mention of the non-plan lines of business within the actual nonrenewal notice. The purpose of this exception is to ensure that the nonrenewal notice gives beneficiaries focused information only about the plan nonrenewal.

Health plans/M+C organizations must not include enrollment applications for non-plan lines of business in any package marketing its M+C products, as beneficiaries might mistakenly enroll in the other option thinking they are enrolling in a health plan/M+C organization. Also, if information regarding cost/M+C products and non-plan lines of business are included in the same package, postage costs must be prorated so that costs of marketing non-plan products are not included as "plan-related" costs on ACR proposal submissions.

Television: Health plans/M+C organizations may market other lines of business concurrently with plan products on television advertisements, as long as those products are separate and distinct from the plan product.

Internet: Health plan/M+C organizations may market other lines of business concurrently with plan products on the Internet, though to avoid beneficiary confusion, the health plan/M+C organization must continue to maintain a separate and distinct section of their Web site for plan information only.

The CMS will review the M+C organization's Web pages to ensure that M+C organizations are maintaining the separation between M+C plan information and information on other lines of business.

60.2.1 – HIPAA and the Marketing of Multiple Lines of Business (Rev.)

In general, a health plan/M+CO does not need to obtain authorization from beneficiaries to market its own health-related, value-added products. This includes other lines of business offered by the same covered entity and its subcontractors (business associates) doing business on behalf of the covered entity. However, a health plan/M+CO must obtain authorization from beneficiaries under certain circumstances. For example, authorization is needed if the product is a pass-through discount, a product offered by an entity other than the covered entity or outside of a business associate contract, an accident only policy, a life insurance policy, or is not in the plan of benefits because it is not a health related item or service. For additional information regarding HIPAA, go to www.hhs.gov/ocr/hipaa/.

60.3 – Third Party Marketing Materials (Rev.)

From time to time, a third party may prepare marketing materials for a health plan's/M+CO's membership and/or supply those materials to the membership. These materials are known as "third party marketing materials," and can be prepared both by benefit/service providing and non-benefit/service providing third parties. Marketing review of these materials is dependent upon the type of third party, as outlined in the remainder of this section.

60.3.1 – Benefit/Service Providing Third Party Marketing Materials (Rev.)

A benefit/service-providing third party is an entity that either administers or covers the health care benefits of the health plan's/M+CO's Medicare membership or provides health care services to the health plan's/M+CO's Medicare membership. Some examples of benefit/service providing third party entities would be employer groups, drug companies, or nursing homes, etc.

Other than M+C employer group marketing materials, CMS reviews all marketing materials prepared by benefit/service providing third party entities if they will be used by the health plan/M+CO for its membership (as stated in section 20.2, M+COs are waived from having marketing materials reviewed for employer group members). Marketing materials must be submitted to CMS via the health using the materials, and may not be submitted directly by the third party to CMS. The benefit/service providing third party should submit the material via the health plan/M+CO with the largest membership.

In the event a benefit/service providing third party works with multiple health plans to provide the same marketing material to each organization's membership, the material need only be approved by CMS once, as long as that material is not for use by health plans/M+COs with dual eligible members (since dual eligible marketing materials may need to vary by state). Once CMS has approved the material, it is considered approved for all other health plans/M+COs with which the third party works. The third party or the health plan/M+CO may change the product name, telephone numbers, addresses, and/or tracking codes on the material and a new approval will not be necessary.

Please note that as part of its business relationship with other health plans/M+COs the third party must inform the other health plan/M+CO that it would like to use the CMS-approved material for its membership. Also, the health plan/M+CO and the third party should work together to determine whether the material will be used for the health plan's membership or whether new materials need to be developed.

If a health plan/M+CO intends to have the third party provide the pre-approved material to its membership, it must send an "fyi" copy of that material to the Regional Office for the RO files.

60.3.2 - Non-Benefit/Service Providing Third Party Marketing Materials (Rev.)

A non-benefit/service providing third party is an entity that neither administers the health care benefit nor provides health care services to the health plan's/M+CO's Medicare membership. For the purpose of marketing review, non-benefit/service providing third party entities are organizations or individuals that supply information to a health plan's/M+CO's membership which is paid for by the health plan/M+CO or by themselves. An example of a non-benefit/service providing third party could be a research firm that provides comparative data relating to managed care organizations.

CMS does not review marketing materials originated by non-benefit/ service providing third party entities. If a non-benefit/service providing third party wishes to market to health plan/M+C membership, they must submit the materials to the health plan/M+CO, which in turn, can distribute the materials to their membership. It is the responsibility of the health plan/M+CO to ensure that these marketing materials contain the disclaimer, "Medicare has neither reviewed, nor endorses this information." This disclaimer must be prominently displayed at the bottom center of the first page of the material and must be of the same font size and style as the commercial message.

Endnotes (Rev.)

¹ The primary CMS/health plan contractual frame of reference in Chapter 3 is of a Medicare+Choice organization offering a coordinated care plan. Where applicable, alternative language is provided for cost plans as well as scenarios involving the point-of-service (POS) and Visitor Program features which may be applicable for M+C and/or cost plans.

² The guidelines throughout this document apply to Medicare + Choice Organizations (M+C organizations) as well as Section 1876 of the Act cost contractors, unless stated otherwise. Therefore, for ease of review and reference, the term “Medicare health plan” is used throughout the document to include requirements specific to both Medicare + Choice Organizations and §1876 cost contractors.

³ This endnote has been deleted.

⁴ This endnote has been deleted.

⁵ This endnote has been deleted.

⁶ CMS has the discretion to disapprove language based on site visit reviews identifying substantial deficiencies in Medicare health plan operations.

⁷ A member of the Medicare health plan may use a superlative in relating their personal experience with the Medicare health plan so long as the testimonial is preceded with the phrase “in my opinion” (e.g., “I have been with the organization for 10 years and in my opinion they have given me the best care possible.”) If the member does not preface the superlative statement with the “in my opinion” phrase, the member must substantiate the statement with an acceptable qualifying information source.

⁸ Note 8 has been deleted.

⁹ In accordance with Chapter 3, this information should be provided in at least 12-point font size.

¹⁰ The M+C organizations may choose to disseminate an errata sheet or addendum during the year to update members with respect to changes in provider’s addresses and phone numbers. However, in accordance with 42 CFR 422.111(c), M+C organizations must make a good faith effort to disclose any changes to the provider information upon request and, under 422.111(e), must make a good faith effort to provide written notice at least 30 calendar days before the termination effective date. M+C organizations should consult the M+C regulations for further information.

¹¹ In accordance with Chapter 3, the applicable TDD/TTY number must also be provided, including the hours of operation.

¹² The CMS’ monthly capitation rate to an M+C organization for a plan member is higher for an enrollee who is a Medicaid recipient because, statistically, the Organization incurs higher medical costs due to higher utilization than that of a non-Medicaid recipient. However, because CMS created the QI-1 category of Medicaid recipients after it established the standard monthly payment upon which it bases all capitation payments, CMS policy is to not pay the Medicaid adjustment factor for this group.

¹³ Since Medicare health plans are primarily responsible for conducting outreach, Chapter 3 has been written targeting that audience. However, if the Medicare health plan contracts with another entity for any part of this outreach, the contracting entity must abide by Chapter 3 as well.

¹⁴ The CMS considers the following to be examples of substantive changes to an outreach program that would make the proposal and/or attached member materials an “initial” proposal: changes to the steps involved in the outreach process, changes to the language in the outreach letters, revisions to the telephone scripts, changes to the network of subcontractors participating in the outreach efforts, etc. CMS considers the following to be examples of changes allowable without designating the proposal as “initial”: contact telephone numbers, letterhead, mailing dates and targeted member numbers, updates to income and resource criteria and benefit levels as updated by the State.

¹⁵ Outreach proposals should go to CMS , Division of Medicare Health Plans, 75 Hawthorne Street 4th Floor, , San Francisco, CA 94105-3918, Attn: Eileen Turner, Manager, Dual Eligible Proposal; fax:415-744-3761.

¹⁶ Section 1851(e)(3) of the Act and 42 CFR 422.10(b).

¹⁷ An application form may be either:

1. A specifically designed enrollment application form which is attached to Medicare health plan marketing materials; or
2. A standard Medicare health plan enrollment application form with instructions that the form must be mailed back to the Medicare health plan.

The key feature of the application form is that it must be completed by the beneficiary in the absence of Medicare health plan marketing influences and returned to the Medicare health plan by mail. (Self-addressed, postage paid, return envelopes may be provided by the Medicare health plan).

¹⁸ This “no” statement also applies to “zero” premium plans that might want to award a nominal value gift as a reward for longevity of enrollment.