



# vIVELO **VERDE**

CY 2019 Medicare Communications and Marketing Guidelines



September 10, 2018

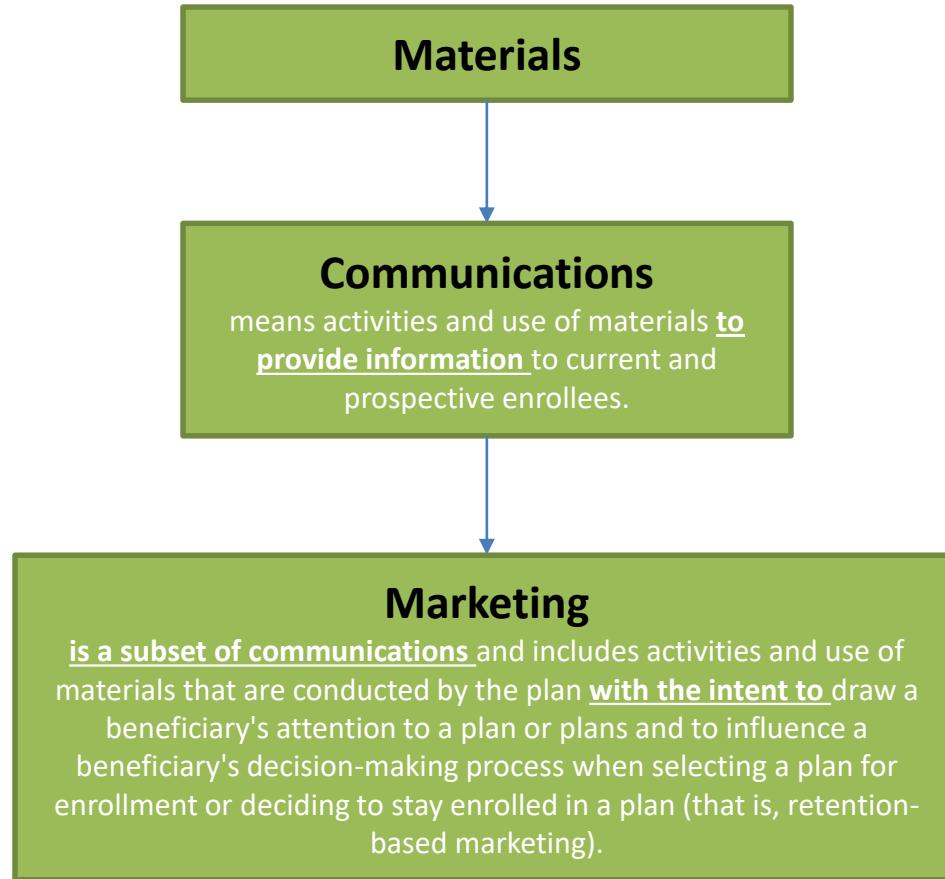
# Objectives/Agenda

- A. Communications and Marketing Definitions
- B. General Marketing and Communication Requirements
- C. Endorsement and Testimonials
- D. Electronic Communications
- E. Marketing Through Unsolicited Contact
- F. Prohibition of Marketing OEP
- G. Educational, Marketing/Sales Events
- H. Personal/Individual Marketing Appointment
- I. Scope of Appointment Requirements
- J. Prohibited Terminology, Plan Comparisons, Nominal Gifts
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- L. Social Media and Mobile Apps
- M. Call Center
- N. Agent/Broker Requirements
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# Medicare Communications & Marketing Guidelines

- Published by CMS on 9/5/2018
- Applicable to **CY 2019** marketing and communications materials and activities:
  - General Marketing Requirements
  - Educational Events
  - Marketing/Sales Events
  - Activities in a Healthcare Setting
  - Agent/Broker Activities, Oversight, and Compensation requirements

# Understanding the **NEW** Definitions



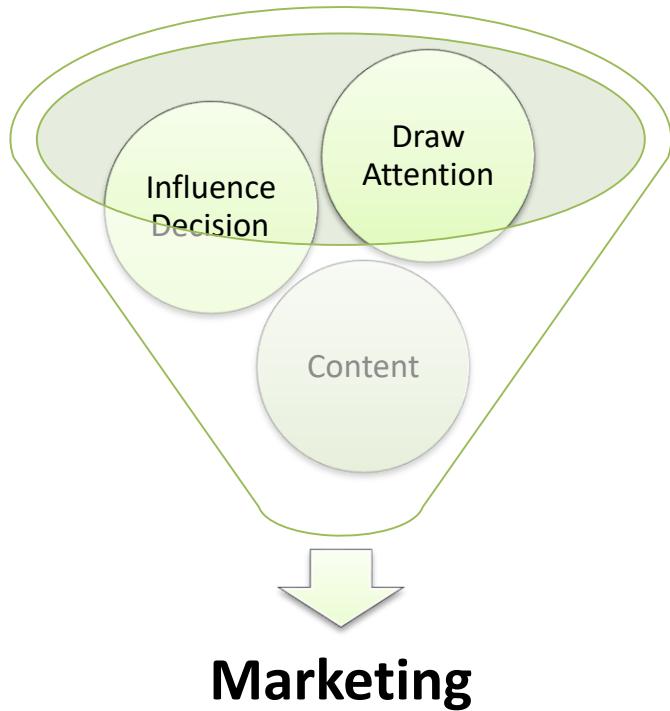
**The INTENT and CONTENT**

# Intent and Content

Communication activities and materials are distinguished from marketing activities and materials based on both intent and content:

- **Intent** – the purpose of marketing materials is to draw a prospective or current enrollee's attention to a plan or plans to **influence beneficiary's decision to enroll or remain on the plan**.
- **Content** – The topics or matter treated on the marketing or communication materials intended to draw attention to a plan or to influence a beneficiary's enrollment decision.

# Marketing Materials



## Example:

A billboard reads “MCS Classicare Offers \$0 Premium Plans”

*Marketing or Communication?*

**Marketing.**

The advertisement includes both the intent to draw the viewer's attention to the plan and has content that mentions zero-dollar premiums being available.

# Communication Materials

## Example #1:

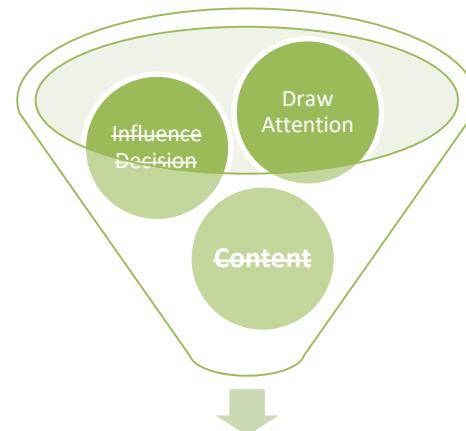
A flyer reads “MCS Classicare is now offering Medicare Advantage coverage. Call us at 1-800-MCS Classicare for more information.”

While the intent is to draw a beneficiary’s attention to MCS, the information provided does not.

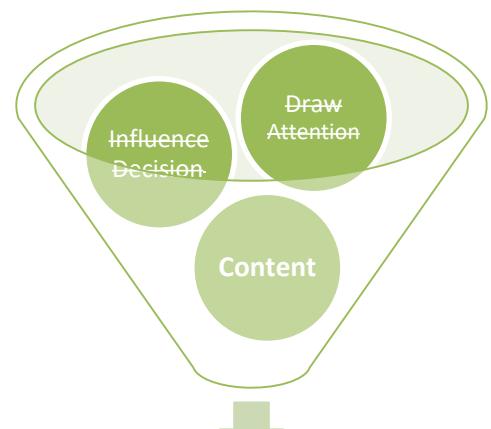
## Example #2:

A letter is sent to enrollees to remind them to get their flu shot. The body of the letter says, “MCS Classicare enrollees can get their flu shot for \$0 copay at a network pharmacy...”

While the letter mentions cost sharing, the intent is not to steer the reader into making a plan selection or to stay with the Plan, but rather to encourage existing enrollees to get a flu shot. The letter contains factual information about coverage and was provided only to current enrollees.



Communication



Communication

# Example of Communications Materials/Events

- Evidence of Coverage (EOC)
- Enrollment Forms
- Appeals & Grievances Notices
- Enrollment & Disenrollment Notices
- Excluded Provider Letters
- Explanation of Benefits (EOB)
- Formularies
- Membership ID Cards
- Mid-year Change Notifications
- Non-Renewal/Termination Letters
- Outbound Enrollment Verification
- Part D Transition Letter
- Pharmacy and Provider Directories
- Pre-Enrollment Checklist
- Prescription transfer Letter
- Scope of Appointment

This is not a complete list. If you have doubts as to whether the material is a communication or marketing material ASK!

# Example of Marketing Materials/Events

- Star Ratings Document
- Summary of Benefits (SB)
- Sales Scripts/Events
- Individual Appointments
- Other materials/events intended to draw attention or influence beneficiary's enrollment decision that includes the following content:
  - Information about benefits or benefits structure;
  - Information about premiums and cost sharing;
  - Comparisons to other Plan(s)/Part D sponsor(s);
  - Rankings and measurements in reference to other Plan(s)/Part D sponsor(s); and/or
  - Information about Star Ratings

This is not a complete list. If you have doubts as to whether the material is a communication or marketing material ASK!

# Activities: Marketing or Communication?

- Interaction with a beneficiary could begin as communication, but become marketing
  - Must follow marketing requirements
- Example: Enrollee calls customer service for questions related to a plan the beneficiary is currently enrolled; during the call, the enrollee asks about other plans, moving the call from communications to marketing.

# General Marketing Requirements

- **NEW** Plans may market current and prospective years
  - Starting October 1
  - Marketing Materials must clearly indicate plan year
- Only advertise in defined service area
  - Must clearly disclose service area if advertising in specific service area is unavoidable

# Endorsement and Testimonials

- Product endorsements and testimonials must:
  - Must identify the Plan's product or company by name
  - Medicare beneficiaries endorsing or promoting a Plan must be enrolled
  - If an individual is paid to endorse or promote or has been paid for an endorsement or promotion of the Plan or product, the advertisement must state paid endorsement.
  - If an individual, such as an actor, is paid to portray a real or fictitious situation, the advertisement must clearly state it is a “Paid Actor Portrayal.”
  - The Plan must be able to substantiate any claims made in the endorsement/testimonial.

**NEW NOTE:** Reuse user's content or comment from social media sites that promotes the plan is considered endorsement and testimonial and must comply with requirement.

# Electronic Communication Policy - **NEW**

Plans may now initiate contact via email to prospective enrollees and to retain enrollment for current enrollees.

- Text messaging and other forms of electronic direct messaging (e.g. social media and electronic voicemail messages) is unsolicited contact

## Marketing Through Unsolicited Contact - **CHANGE**

- Plans may now make direct contact via **email**.
  - may initiate **unsolicited contact** via email to **prospective** enrollees
  - may initiate contact to retain enrollment for current enrollees. Cannot market next year offering prior October 1
  - all email marketing **must** contain an “unsubscribe” or “opt-out” capability.
- Plans and sponsors are still not permitted to use door-to-door or telephonic solicitation and cannot approach enrollees in public areas.

# Marketing Through Unsolicited Contact – Exceptions

- Conventional mail and other print media
  - E.g. advertisements, direct mail
- Agents/brokers who have a pre-scheduled appointment with a potential enrollee
  - May leave information at the residence if ‘no show’
  - Contact potential enrollee if provided permission. Must be event-specific
- Call individuals who have given permission (e.g. by filling out a BRC, or email requesting a call, or returning phone call or messages.

# Prohibition of Marketing OEP - NEW

- The Open Enrollment Period (OEP) runs from **1/1 to 3/31** (Q1)
- Plans cannot knowingly market during the OEP or engage or promote agent/broker activities to target the OEP as an additional marketing opportunity
  - Plan **cannot** target beneficiaries who are in the OEP because they made a choice during the Annual Election Period
  - Send unsolicited material advertising the ability to make an additional enrollment change or referencing the OEP
  - Engage in or promote agent/brokers activities to target the OEP

# Prohibition of Marketing OEP - NEW

- Plans can do the following:
  - **Market to beneficiaries who are new to Medicare**, also known as “age-ins,” who have not yet made an enrollment decision
  - 5-star plans can continue the Special Enrollment Period (SEP)
  - **Market to dual-eligible**
  - Send marketing materials and have meetings with those who request the information/meeting, **and provide OEP information via the call center**

## Educational Events - Change

- May include communication activities and distribution of communication materials
- May answer beneficiary initiated questions
- May set up a future marketing appointment and distribute business cards and contact information (including collecting and completing SOA forms) for beneficiaries to initiate contact

**Note:** Agent may provide business reply cards and distribute communication materials at educational events.

## Educational Events – cont'd

- Must be explicitly advertised as educational
- Must not include marketing or sales activities/materials
- May not conduct a marketing/sales event immediately following an educational event in the same location (e.g. hotel)
- May provide meals

# Marketing/Sales Events

- Must submit scripts and presentations prior to use
- Sign-in sheets must clearly be labeled as optional
- Health screenings are not permitted
- Cannot require attendees to provide contact information as a prerequisite
- Contact information provided for raffles or drawings cannot be used for other purposes
- May not provide meals. Light snacks and refreshments are allowed

# Personal/Individual Marketing Appointments

- SOA required
- Only discuss plan products documented in SOA
- Only market health-related products (no life insurance)
- Cannot solicit/accept enrollment forms until October 15 for January 1 effective dates (unless SEP).

# Scope of Appointment (SOA) - Communication

- Required for all marketing activities, in-person, telephonically, including walk-ins, prior to appointment
- Can be signed electronically, hardcopy, or telephonic recording
- Must include:
  - Product type to be discussed
  - Date of appointment
  - Beneficiary and agent contact information
  - Statement stating, no obligation to enroll, current or future Medicare enrollment status will not be impacted, and automatic enrollment will not occur
- New SOA if, during appt., beneficiary requests information regarding a different plan type.

# Prohibited Terminology/Statements

Plans May Not:

- Claim they are recommended or endorsed by CMS, HHS
- Use unsubstantiated absolute or qualified superlatives or pejoratives (except in logos/taglines)
- Market will not disenroll due failure to pay premiums
- Use ‘free’ to describe \$0 premium, reductions in premiums (including Part B buydown)

# Prohibited Terminology/Statements

Plans May:

- State plans is approved to participate in Medicare programs
- User “Medicare-Approved” to describe benefits and/or services
- User “free” in conjunction with mandatory, supplemental, preventive benefits at a \$0 cost sharing for all enrollees

# Plan Comparisons

Plans May:

- Compare plan with another Plans/Part D Sponsor
  - Only if can be supported (e.g. studies or statistical data)
  - Must be factually based
  - Cannot be misleading

## Nominal Gifts

Plans may offer nominal gifts, but must comply with the following:

- Value must be \$15 or less, **\$75 aggregate, per person, per year**
- Must be given regardless of whether they enroll and without discrimination
- If given as one large gift (e.g. concert, raffle, drawing) the total must not exceed \$15 based on attendance
- May not be in the form of cash or other monetary rebates

# Activities in the Healthcare Setting

CMS distinguishes between provider-initiated activities and plan-initiated activities in a healthcare setting.

## Contracted Provider Initiated Activities

- Providing the names of Plan with which they contract and/or participate;
- Answering questions or discussing the merits of a Plan or Plans, including cost sharing and benefits information. These discussions may occur in areas where care is delivered.
- Referring patients to Plan marketing representatives
- Referring patients to Plan marketing materials available in common areas

## Plan – Initiated Provider Activities

- Make available, distribute, and display communication materials, including in areas where care is being delivered; and
- Provide or make available Plan marketing materials and enrollment forms outside of the areas where care is delivered (such as common entryways, vestibules, hospital or nursing home cafeterias, and community, recreational, or conference rooms).

**For a complete list of permissible activities and not allowable activities refer to section 60 of the MCMG**

# **Activities in a Healthcare setting**

**Plans may do the following in common areas of a healthcare setting:**

- Conduct sales activities, including sales presentations
- Distribute marketing materials
- Distribute and collect Enrollment Forms

**Common areas include, but are not limited to:**

- Entryways, vestibules
- Waiting rooms – New
- Hospital or nursing home cafeterias
- Community, recreational, or conference rooms

# **Activities in a Healthcare setting, cont'd**

**Plans may not market in restricted areas, such as:**

- Exam rooms
- Hospital patient rooms
- Treatment areas where patients interact with a provider (including dialysis treatment facilities)
- Pharmacy counter areas (where patients interact with pharmacy providers and obtain medications)
- This is not an exhaustive list

# **Social Media and Mobile Apps**

- Social media posts(i.e. Facebook, Twitter, YouTube, Instagram) that meet the definition of marketing must be submitted to CMS.
  - Approval 10 to 45 days
  - Acceptance 5 days
- All other media posts must be submitted to the Compliance Department
- All social media posts required to include the Federal Contracting Disclaimer.

## **Mobile Applications**

- If will use an app must submit to CMS if meets marketing definition
- Must follow Section 70.4 guidance

# Call Center Operations - NEW

- **October 1 to March 31**
  - Plans must keep their call centers open 7 days a week, from 8:00 am to 8:00 pm from **(6 additional weeks (504 additional hours))**
  - IVR for Thanksgiving and Christmas days
- **April 1 to September 30**
  - Plans must keep their call centers open from Mondays to Fridays from 8:00am to 8:00pm
  - IVR for Saturdays and Sundays and Federal Holidays

# Agent/Broker Requirements

## Agents selling MA Plans must:

- Be licensed and appointed
- Be trained and tested annually
- Achieve an 85% or higher on agent testing; and
- Secure and document a SOA prior to meeting with potential enrollees

# **Permitted Agent Activities**

**Permitted activities include, but are not limited to:**

- Conduct sales presentations;
- Hold one-on-one appointments with potential enrollees
- Provide business reply cards at educational events;
- Create and distribute communication materials
- Distribute marketing materials that are approved by CMS
- Use CMS created materials (must not be modified in any way), otherwise considered a marketing material.

**Agents must not charge beneficiaries marketing fees**

# Compensation

**Fair Market Value (FMV) for CY2018 is \$100 for MA Plans and \$25 for PDPs.**

- Referral/finder's fees may not exceed FMV and must be included in the total compensation
- Compensation includes monetary or non-monetary remuneration relating to a sale/renewal for:
  - Commissions, bonuses, gifts, prizes, awards, and referral/finder's fees
- Compensation DOES NOT include:
  - Payment for fees to comply with state appointment laws;
  - Training/testing and certification costs
  - Reimbursement for actual costs (e.g., mileage, rent, snack, materials)

# References

- MCMG may be updated or superseded by new sub regulatory information issued by CMS. Please remember to consult the Compliance Department at [mcscompliance@medicalcarsystem.com](mailto:mcscompliance@medicalcarsystem.com) if you have any doubts.
- Links to CMS website:
  - <https://www.cms.gov/Medicare/Health-Plans/ManagedCareMarketing/FinalPartCMarketingGuidelines.html>
  - <https://www.cms.gov/Medicare/Health-Plans/ManagedCareMarketing/MarketngModelsStandardDocumentsandEducationalMaterial.html>

**Thank You!**

**Questions?**