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COMMENTS SUBMITTED VIA ELECTRONIC FORM

Re: 2020 Final Medicare Communications and Marketing Guidelines (MCMG)

Thank you for this opportunity to comment on the 2020 Medicare Communications and Marketing Guidelines.

General Comments

We continue to be disappointed that these guidelines do not offer sufficient guidance for how Medicare Advantage (MA) should market plans with new supplemental benefits. Guidance on these supplemental benefits is absolutely vital, as the risk of such benefits is that they will enable sponsors to cherry-pick beneficiaries and inappropriately steer potential enrollees. CMS continues to lose sight of valuable opportunities to protect people with Medicare.

The availability of supplemental benefits must not become merely or primarily a sales tool and sponsors must not be permitted to use supplemental benefits as a marketing device to persuade beneficiaries into their plans. We are especially concerned that agents and other sales personnel will ask individuals about their conditions and steer them toward specific plans in violation of anti-discrimination rules, and this guidance continues to do nothing to assuage our concerns. Cherry-picking and lemon-dropping must not be permitted through lax oversight.

We urge CMS to establish strict rules against such targeting and suggest that all shareable information about every plan be divulged to potential enrollees, empowering them to choose the appropriate plans for themselves. This may require plans to categorize benefits in a standard way to allow beneficiaries to understand the benefits catalog as a whole. Both CMS and plan sponsors must be vigilant for unusual spikes in enrollment or enrollment patterns that might reveal inappropriate steering of enrollees.

30.1

Propose changing the first sentence of the second paragraph to say: "Plans/Part D sponsors must comply with their obligations under other federal anti-discrimination rules and requirements including HHS regulations found at 45 CFR Part 92." While we note that the header listings of regulatory sections includes 45 CFR Part 92, it is important to include a specific reference in the text as well. Those regulations were adopted by HHS and set specific requirements for health care entities so are very relevant to covered plans.

30.3

We very much appreciate the clarification that template and model documents must include translation of variable data and the specific example of appeal letters. For interpreter services in call centers, we urge CMS to work with plans to develop scripts that affirmatively offer interpreter services and require their use whenever a call center representative perceives that language issues are impeding communication with a caller. We are concerned by the low uptake in interpreter services at call centers relative to the large numbers of LEP beneficiaries and believe that plans should do more to make beneficiaries aware of these services and comfortable using them. For example, some beneficiaries may rely on a family member or friend to contact call centers and interpret for them because they are not aware that professional interpretation services are available free of charge.

30.6

We object to permitting unsolicited email communication with prospective enrollees who do not have other relationships with the plan sponsor. Emails are only slightly less intrusive than phone calls. Allowing mailing is quite enough of an intrusion on older adults and persons with disabilities who need time and space, to make decisions about their health care.

30.7

We appreciate the changes in this section to protect dual eligible individuals from misleading or targeted marketing. Further, we urge CMS to consider, either in this section or elsewhere in the guidance, additional substantive marketing requirements with respect to dual eligible beneficiaries. Of particular concern is the marketing of supplemental benefits. Advocates report that many dual eligible individuals are misled, either deliberately or inadvertently, about supplemental benefits that duplicate or partially overlap with their Medicaid benefits. Specifically, we ask that CMS require brokers and agents to determine whether a beneficiary is dually eligible for Medicare and Medicaid and, if so, to explain to the individual how the supplemental benefits work with their Medicaid coverage. To ensure accuracy, we suggest that the best approach would be for plans to create materials that the brokers/agents can review with dual eligible individuals and leave with them for reference.

40.2

We continue to be concerned about allowing unsolicited emails, which are only slightly less intrusive than telephone calls. Since we assume that CMS does not provide email addresses of beneficiaries to plans, this encourages buying email lists. It will be difficult if not impossible for CMS to monitor whether emails (and the email lists that plans purchase) are targeted to particular subgroups of beneficiaries in violation of CMS's anti-discrimination requirements. Further, it is cheap and easy for plans to barrage beneficiaries with emails, a practice that does not aid informed choice.

Moreover, when faced with a deluge of unwanted and unhelpful marketing emails from plans with which they have no relationship, we are concerned that people will ignore, discount or unsubscribe from important emails from CMS or their own plan that they have actually opted into.

40.3

First bullet. We do not believe it is appropriate to allow sponsors to initiate telephonic marketing of other Medicare products to MMP members. This permits/encourages sponsors to recruit their own MMP members to D-SNP look-alikes or other non-integrated products. It is inconsistent with the

determination in the Call Letter that D-SNP look-alikes impede efforts to provide integrated care for dual eligibles and also inconsistent with the guidance at 30.7 prohibiting targeting of dual eligible individuals.

80.1

As noted in our comments to 30.3, we urge CMS to require plans to be more proactive with respect to the offer of interpreter services (third bullet). We urge CM to work with plans to develop scripts that affirmatively offer interpreter services and require their use whenever a call center representative perceives that language issues are impeding communication with a caller. We are concerned by the low uptake in interpreter services at call centers relative to the large numbers of LEP beneficiaries and believe that plans should do more to make beneficiaries aware of these services and comfortable using them.

80.3

As discussed at 80.1 above, we urge CMS to require (and consider developing uniform) informational scripts for use in call centers when it appears that a beneficiary has limited proficiency in English and use of an interpreter could facilitate communication.

We suggest adding a script if a plan has taken advantage of the new flexibilities with respect to limitations of certain supplemental benefits to members with particular diagnoses or to those in specific geographical areas. The script should include information about those limitations.

80.4

See 80.1. We urge scripts offering interpreter services to callers that Call Center personnel identify as having limited proficiency in English.

80.5

See 80.1. We urge scripts offering interpreter services to callers that Call Center personnel identify as having limited proficiency in English.

110.1

We reiterate our previous call for CMS to thoroughly review broker training and testing materials, as well as plan design materials, to ensure broker compliance, especially in light of the new flexibilities. It is particularly important that brokers understand any limits based on diagnosis or geography for supplemental benefits and that they are trained in how to present those details in an objective, informational way that beneficiaries can easily understand.