

20.3 - Marketing and Dissemination

(Rev.6, Issued: 11-07-08, Effective/Implementation: 11-07-08)

20.3.1 - Prior Review and Approval of Marketing Materials and Enrollment Forms

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Direct Contract and “800 series” Plans

CMS has waived the prior review and approval requirements for marketing materials and enrollment forms contained in [42 CFR 423.2262](#), [423.2264](#), [423.2266](#), and [423.2268](#) for all EGWPs. These include all “800 series” plans as well as Direct Contract plans. This waiver applies to all marketing materials, including the marketing materials requirements contained in the Medicare Marketing Guidelines.

Note that as a result of this waiver, Direct Contract plans and PDP sponsors offering “800 series” EGWPs or employer-sponsored individual PDPs are not subject to the annual restriction against communicating to Medicare eligible beneficiaries before October 1st. Rather, CMS strongly encourages employer/union sponsors and entities offering these plans to employers/unions to begin the communication process early with these beneficiaries and to continue to communicate about their benefits as frequently as possible prior to their particular annual open enrollment period (which may differ from Medicare’s annual coordinated election period). More specifically, employers/unions and/or entities that offer employer-sponsored “800 series” or individual plans to employers/unions should be prepared to direct beneficiaries to available resources and should explain their coverage and how it works with Medicare.

Employer/Union Group Plan Sponsored Individual PDPs

Note that the waiver of prior review and approval requirements for marketing materials and enrollment forms contained in 42 CFR [423.2262](#), [423.2264](#), [423.2266](#), and [423.2268](#) will also apply to a PDP sponsor that elects to use the waiver outlined in section 20.3.2.1.1 below which allows PDP sponsors to customize dissemination materials. More specifically, the waiver will apply to those PDP sponsors that elect to customize dissemination materials for a particular employer/union group health plan sponsor that offers coverage to its Part D eligibles using an individual PDP (e.g., individual PDP paired with a non-Medicare supplemental drug coverage designed to “wrap around” or enhance the individual PDP).

20.3.2 - Timing and Content of Employer/Union Sponsored Group Health Plan Dissemination Materials

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20.3.2.1 - Employer/Union Sponsored Group Plans Subject to Medicare Dissemination Requirements

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In general, dissemination materials for employer/union sponsored enrollees in Direct Contract plans, “800 series” plans or individual PDPs are subject to all applicable Medicare dissemination regulatory requirements ([42 CFR 423.128](#)) and sub-regulatory guidance (including any requirements related to the timing and content of these materials) unless waived or modified as outlined below. This also includes all of the dissemination requirements contained in the Medicare Marketing Guidelines unless those requirements have been explicitly waived or modified.

20.3.2.1.1 - Customizing Medicare Dissemination Materials and Enrollment Forms

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In order to meet the requirements of [42 CFR 423.128\(a\)\(2\)](#), which require a Part D sponsor to disclose information about the plan in a clear, accurate and standardized form, PDP sponsors should provide customized dissemination materials to “800 series” and Direct Contract PDP enrollees to reflect the modified/supplemental benefits being provided to that particular

employer/union group health plan enrollees, if any. More specifically, CMS has waived any rules that would otherwise prohibit these entities from offering customized dissemination materials to the extent those customized materials will more clearly and accurately describe the benefits available to employer/union group Part D eligibles (for example, when the supplemental coverage is taken into account). Note that this waiver also allows customization of dissemination materials for employer-sponsored enrollments in individual PDPs (e.g., where an employer/union group health plan sponsors coverage to its retirees using an individual PDP and a non-Medicare supplemental plan designed to “wrap around” or enhance the individual PDP or where the employer/union sponsor is subsidizing or paying premium amounts for its Part D eligibles enrolled in an individual PDP).

With regard to premium amounts (including premium amounts for low-income premium subsidy eligible individuals) that are required to be accurately reflected on any customized beneficiary dissemination materials (e.g., Evidence of Coverage, LIS Rider), PDP sponsors should ensure these materials accurately reflect the actual premium amount the beneficiary pays when the supplemental coverage, if any, and any corresponding employer/union premium subsidization (or subsidization by CMS in the case of low-income premium subsidy eligible beneficiaries) is taken into account. Alternatively, if accurate premium information concerning the amount the beneficiary actually pays is not available to the PDP sponsor, the PDP sponsor may substitute language in lieu of providing actual premium amounts (e.g., “For information concerning the actual premiums you will pay, please contact [insert employer/union group health plan sponsor name] or your employer group benefits plan administrator.”)

As provided in section 20.3.1 above, all customized employer/union group health plan materials are not required to be submitted for review and approval by CMS prior to use. Customized materials must not be submitted through HPMS.

Also, beginning with contract year 2009, PDP sponsors are no longer required to submit informational copies of these dissemination materials to CMS at the time of use (for details on the previous waiver policies in effect for contract years 2006 through 2008 requiring informational copies of employer/union group health plan dissemination materials to be submitted to CMS, see Appendix II). However, as a condition of CMS providing these particular waivers or modifications, CMS reserves the right to request and review these materials in the event of beneficiary complaints or for any other reason it determines to ensure the information accurately and adequately informs Medicare beneficiaries about their rights and obligations under the plan.

PDP sponsors also will be required to retain these dissemination materials and provide access to these written materials to CMS (or its designees) in accordance with [42 CFR 423.504\(d\)](#) and [423.505\(d\)](#) and (e). If the materials for multiple employer/union sponsors are identical except for employer group sponsor identifier information, CMS will not require a PDP sponsor to retain materials for each employer group (i.e., retention of one “template” version of dissemination materials used for particular employer groups is permissible).

20.3.2.1.2 - Timing for Issuance of Employer/Union Sponsored Group Plan Medicare Dissemination Materials

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Employer sponsored “800 series” plans, Direct Contract plans or individual PDPs that are subject to Medicare marketing and dissemination requirements are also subject to any applicable timing requirements for issuance of these materials. However, CMS has waived or modified applicable timing requirements in certain circumstances. These include those circumstances where a particular employer/union sponsor has an open enrollment period that differs from Medicare’s Annual Coordinated Election Period (ACEP). In this situation, the timing for issuance of any dissemination materials that are based on the ACEP should be based instead on the employer/union sponsor’s open enrollment period. For example, for contract year 2008, in accordance with applicable timing requirements for these materials, if an employer/union sponsor’s open enrollment period began on December 1, 2007, the ANOC and Summary of Benefits (SB), LIS Rider and Formulary must have been received by beneficiaries no later than November 16, 2007 (15 days before the beginning of the employer/union group health plan’s open enrollment period). Beginning in 2009, a combined Annual Notice of Change/Evidence of Coverage (ANOC/EOC), LIS rider, and Formulary are required to be received by beneficiaries no later than 15 days before the beginning of the ACEP. Therefore, for contract year 2009, if an employer/union sponsor’s open enrollment period begins on December 1, 2008, these documents must be received by beneficiaries no later than November 16, 2008 (15 days before the beginning of the employer/union group health plan’s open enrollment period). The timing for other dissemination materials that may be based on the start of the Medicare plan (i.e., calendar) year should be appropriately based on the employer/union sponsor’s plan year. If the employer/union sponsor does not have an open enrollment period, then dissemination materials that are based on the ACEP must be received by beneficiaries no later than 15 days before the beginning of the plan year.

20.3.2.2 - Plans with Employer/Union Sponsors Eligible for Waiver of Medicare Dissemination Requirements (“Alternative Dissemination Standards Waiver”)

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CMS has waived the specific dissemination requirements of [42 CFR 423.128](#) for employer/union group health plan beneficiaries when the employer/union sponsor is subject to alternative dissemination requirements (e.g., those required by the Employee Retirement Income Security Act of 1974 (“ERISA”)), and the employer/union sponsor complies with such alternative requirements. However, these alternative dissemination materials (including summary plan descriptions and all other beneficiary communications that provide descriptions of the Medicare benefit offerings) must be provided by the Direct Contract PDP or the PDP sponsor offering the “800 series” plan or employer-sponsored individual PDP to beneficiaries on a timely basis.

Similarly, for an employer/union sponsor plan eligible for the alternative dissemination standards waiver referenced above in section 20.3.2.1.2, a PDP sponsor that offers “800 series” plans to these employer/union sponsors must retain copies of these alternative dissemination materials or, alternatively, the information that would be necessary to satisfy its reporting and disclosure obligations under [42 CFR 423.514\(d\)](#). 42 CFR 423.514(d) provides that entities must furnish, upon request, the information that any employees’ health benefits plan needs to fulfill its reporting and disclosure obligations under ERISA.

However, as a condition of CMS providing these particular waivers or modifications, CMS reserves the right to request and review these materials in the event of beneficiary complaints or for any other reason it determines to ensure the information accurately and adequately informs Medicare beneficiaries about their rights and obligations under the plan. PDP sponsors also will be required to retain these dissemination materials and provide access to these written materials to CMS (or its designees) in accordance with [42 CFR 423.504\(d\)](#) and [423.505\(d\)](#) and (e).

20.3.3 - Identification Card (ID) Card Requirements

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Direct Contract PDPs and PDP sponsors that offer “800 series” plans may provide enrollees with one combination member Identification (ID) card which incorporates the medical, Part D, and employer sponsored non-Medicare supplemental medical and/or drug benefits. However, entities must comply with all other CMS ID card requirements, including the requirements contained in the Medicare Marketing Guidelines. Note that this same waiver applies when a PDP sponsor elects to use the waiver outlined in section 20.3.2.1.1 above to customize dissemination materials for a particular employer/union sponsor that offers coverage to its retirees using an individual Medicare plan paired with a non-Medicare supplemental plan designed to “wrap around” or enhance the individual Medicare plan.

Note that it is also permissible to include the name and/or logo of the employer/union sponsor on the ID card. This activity is not considered “co-branding”.

20.3.4 - “Doing Business As” (DBA) Requirements

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PDPs that offer “800 series” plans may use different names for “doing business as” purposes. However, for HPMS purposes only, these entities will be restricted to entering one “doing business as” name.

20.3.5 - Agent and Broker Licensure and Training Requirements

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All agents and brokers (employed and contracted) selling “800 series” plans to employer/union group plan sponsors on behalf of a PDP sponsor must be licensed to sell these products as required by state law. However, representatives of a PDP sponsor or those representatives of employer/union group plan sponsors or others acting on their behalf (e.g., their employees, benefit consultants, third party administrators) who conduct educational, enrollment or informational events for retirees of employer/union sponsors are not required to

be licensed for these purposes as these activities would not constitute marketing or sales activities.

To ensure that employer/union group sponsors are receiving accurate and reliable information to make informed decisions on behalf of its retirees, it is critical that health plan representatives such as agents and brokers (employed and contracted) performing these marketing and sales activities are knowledgeable about the products they are selling, including “800 series” plans. CMS expects that PDP sponsors will ensure that brokers and agents are knowledgeable about the products they are selling by requiring they are trained on Medicare rules and regulations, as well as on plan details specific to the plan products being sold. However, the broker/agent testing requirements at 42 CFR 423.2274(c) do not apply under these circumstances.

Note that beginning with the 2007 contract year, the marketing and dissemination guidance contained in this chapter (section 20.3) supersedes the EGWP Marketing and Disclosure/Dissemination guidance located in Pub. 100-18, Chapter 2, section 13 (released on July 25, 2006).