

# CY2020 CMS Medicare Marketing Guidelines (MMG) DO's & DON'Ts Agent Summary

Based on MMG released by CMS on 8/6/2019-CMS updates the MMG annually

CMS holds us responsible for the actions of all agents representing ATRIO Health Plans. You **must** follow CMS regulations and guidelines in your daily Medicare activities. It's important that you know these regulations and guidelines, and that you understand how they govern your business and conduct. The guidelines apply to Medicare age-ins and existing beneficiaries. You are responsible for knowing the rules and complying with them.

Newly appointed agents and annually thereafter all agents are required by ATRIO to sign a "CMS Marketing Guidelines Attestation" acknowledging that he/she understands the current year Medicare Marketing Guidelines and agrees to comply with all guidelines set forth in the MMG.

This document is an overview of Medicare Marketing Guidelines and compliance program requirements for ATRIO Health Plans and CMS. It highlights specific regulations related to agent oversight as outlined in the complete CMS MMG. We created it as a portable list for you to reference when selling Medicare products. **It is not all-inclusive.** We recommend you refer to it often to remain compliant. Potential consequences of engaging in inappropriate or prohibited marketing activities include disciplinary actions, termination, and forfeiture of compensation.

To view the full CMS Medicare Marketing Guidelines, go to [https://www.cms.gov/Medicare/Health-Plans/ManagedCareMarketing/Downloads/CY-2019-Medicare-Marketing-Guidelines\\_Final072018.pdf](https://www.cms.gov/Medicare/Health-Plans/ManagedCareMarketing/Downloads/CY-2019-Medicare-Marketing-Guidelines_Final072018.pdf)

## Enrollment Form: Required Materials

- When providing an enrollment form you **MUST** also provide: Star Ratings Information, Summary of Benefits and Notice of Non-Discrimination

## General Communication Requirements: MMG Sections 30, 30.7

- **Only Special Needs Plans & MMPs** may limit enrollment to individuals meeting eligibility requirements based on health and/or other status. Basic services and information **MUST** be available upon request to individual with disabilities.
- **DO NOT** target beneficiaries from higher income areas or state/imply that plans are only available to seniors rather than to all Medicare beneficiaries (**cherry picking**)
- **DO NOT** discriminate based on race, ethnicity, national origin, religion, gender, age, mental or physical disability, health status, claims experience, medical history, genetic information, evidence of insurability, or geographic location.

## General Marketing Requirements-MMG Sections 40, 40.6, 40.6.2

- **CANNOT** market for an upcoming plan year prior to October 1 and must cease current year marketing activities to anyone other than beneficiaries who are eligible for a valid enrollment (e.g., aging-ins, special enrollment period (SEP)) once they begin marketing benefits

for the new contract year. Current year materials may be provided upon beneficiary request and enrollment applications may be processed.

- **DO NOT** solicit/accept an enrollment request (applications) for a January 1<sup>st</sup> effective date prior to the start of the Annual Enrollment Period (AEP) unless the beneficiary is entitled to another enrollment period.
- **DO NOT** intimidate, nor use high-pressure tactics (aggressive marketing behavior), or scare tactics to enroll a beneficiary into a plan or to acquire an in-home appointment; if told they are not interested, end visit/conversation immediately. **MIPPA, Oct 2008**

## Marketing Materials

ATRIO is responsible for ensuring **all** marketing materials used by **any** agent selling our Medicare plans are consistent with CMS MMG and all other relevant issued guidance.

- **USE** only marketing materials and scripts **previously reviewed** by us prior to their use. Marketing materials **MUST** contain required **CMS disclaimers** as outlined in MMG.
- **MUST** provide overall **Star Ratings** information through standardized Star Ratings information document with any enrollment form and/or Summary of Benefits, and be prominently posted on plan websites.
- **MUST** use updated Star Ratings information within 21 days of release of said information.
- **MUST** include with any enrollment form a Star Ratings, Summary of Benefits and Notice of Non-Discrimination forms.
- **DO NOT** submit marketing material directly to CMS; materials must be submitted directly by us to CMS for review and approval.
- **DO NOT** use any marketing materials unless CMS approval notation is indicated on required materials.
- **DO NOT** encourage enrollment based on argument that if enrollee is **dissatisfied with a plan**, he/she can later request an SEP and change to a higher-rated plan.
- **DO NOT** attempt to discredit or refute a **Low Performing Icon (LPI)** assigned by CMS by only highlighting a higher overall Star Ratings.
- **DO NOT** market non-health related products to prospective enrollees during an MA, MA-PD sales activity (**cross-selling**).

## Prohibited Terminology/Statements: MMG Section 30.7

Plans/Part D sponsors are prohibited from providing inaccurate or misleading information, or engaging in activities that could mislead or confuse beneficiaries or misrepresent the Plan/Part D sponsor.

- **DO** state that the ATRIO is approved for participations in Medicare programs and /or it is contracted to administer Medicare benefits.
- **DO** use term “Medicare-approved” to describe benefits and services within marketing materials.
- **DO NOT** make misrepresentations about ATRIO, yourself or benefits/services covered by our plans.
- **DO NOT** use words, symbols, or state you or the products mentioned are recommended or endorsed by CMS, Medicare or the Department of Health & Human services (DHHS)
- **DO NOT** use absolute superlatives (i.e., “the best,” “highest ranked,” “rated number 1”) unless substantiated with supporting data provided during CMS marketing review process

- **DO NOT** use qualified superlative (i.e., “one of the best,” “among the highest rate”) unless substantiated with supporting data provided during CMS marketing review process.
- **DO NOT** compare organizations/plans to another by name unless there is written concurrence from all organizations being compared: documentation must be included when material is submitted for CMS review.
- **DO NOT** use the term “free” to describe a zero dollar premium or in conjunction with any reduction in premiums, deductibles or cost share, including Part B premium buy-down, low-income subsidy or dual eligibility.

## Promotional Activities, Nominal Gifts, Rewards & Incentives: MMG Sections 40.2, 40.4, 40.8

**Promotional Activities** designed to attract attention of prospective enrollee/members and/or encourage retention of current enrollees/members.

- **MUST** have a nominal gift value (see definition below).
- **MUST** track and document items given to current members.
- **MUST** be offered to all potential enrollees regardless of whether they enroll, and without discrimination.
- **CANNOT** be considered a health benefit (i.e., free checkup).
- **CANNOT** be tied directly or indirectly to the provision of any other covered item or service.
- **NOT** required to track pre-enrollment promotional items on a per person basis.
- **DO NOT** willfully structure pre-enrollment activities with the intent to give people more than \$75 per year.

**Nominal Gifts** may be offered to potential enrollees, as long as gifts are of nominal value, provided regardless of whether they enroll, and without discrimination.

- **MUST** have a nominal gift value (maximum value \$15) and provided regardless of enrollment. If a nominal gift is one large gift (i.e., concert, raffle, drawing) the total fair market value must be nominal per person (be worth \$15 or less when it is divided by the estimated attendance). For planning purposes, anticipated attendance may be used, but must be based on actual venue size, response rate, or advertisement circulation. Refer to Office of Inspector General website regarding advisory options on gift cards.
- **CANNOT** be in the form of cash or other monetary rebates, even if their worth is \$15 or less. Cash gifts include charitable contributions made on behalf of potential enrollees, and gift certificates and gifts cards that can be readily converted to cash, regardless of the dollar amount.
- **DO NOT** offer gifts over \$15 based on the retail purchase price of the item; if more than one item is offered (ex: pen and flashlight), the combined value of all items offered must not exceed the nominal value of \$15.

**Rewards & Incentives** programs are for current enrollees only. However, Plans may include information about rewards and incentives programs in marketing materials to potential enrollees as long as those communications:

- **DO NOT** target potential enrollees.
- **MUST** be provided to all potential enrollees without discrimination.

- **MUST** be provided in conjunction with information about plan benefits and include information about reward and incentive programs in marketing the material , as long as those communication are provided to all current and prospective enrollees without discrimination; when marketing reward and incentive programs.
- **MUST** market Reward and Incentive Programs in conjunction with plan benefits.

### Exclusion of Meal as a Nominal Gift-MMG: Section 40.5

- **MAY** provide **refreshments** or light snacks at **marketing/sales events** (i.e., coffee, soda, fruit, small dessert items, crackers, cheese).
- **MAY** provide meals at educational events, provided the event meets CMS' strict definition of an educational event, and complies with the nominal gift requirement in MMG section 110.1
- **DO NOT** provide or subsidize meals at marketing/sales events.
- **DO NOT** “bundle” multiple items and provide as if a meal at sales/marketing events.

### Unsolicited Contacts: Electronic/Marketing/Telephonic: MMG Section 40.2, 40.3

**CMS PROHIBITS** all types of marketing through unsolicited contact. Referred beneficiaries **MUST** contact the plan, agent, broker or producer directly.

#### Marketing Contacts

- **MAY** leave information at a beneficiary’s residence if **pre-scheduled appointment** at a beneficiary’s residence becomes a “no-show”.
- **DO** use **mail and other print media** (i.e., advertisements, direct mail) to contact beneficiaries.
- **DO** discuss plan specifics at an **informal marketing/sales event after** the beneficiary approaches your table or kiosk.
- **DO** leave contact information such as **business cards** with beneficiaries for them to give to friends that they are referring you.
- **DO NOT** leave information such as a leaflet or flyer at a residence or car, and **NO** door-to-door solicitation is permitted.
- **DO NOT** approach beneficiaries in **common areas** (i.e., parking lots, hallways, lobbies, sidewalks, etc.)
- **DO NOT** leave telephonic or electronic solicitation, including electronic **voice mail** or **text messaging**.

#### Telephonic Contacts

- **MAY** call your members to promote other Medicare plan types (i.e., you may contact your PDP members to promote our MA-PD offers; plans that are also Medigap issuers may market their MA, MA-PD and PDP products to their Medigap customers), and discuss plan benefits. This language is from CMS HPMS memo 9/18/2014.
- **DO NOT** use bait-and-switch strategies-making unsolicited calls about other business as a means of generating leads for Medicare plans.
- **DO NOT** call former members who have **disenrolled**, or current members in the process of **voluntarily disenrolling** to market plans or product except as permitted.

- **DO NOT** call or contact members who voluntarily disenrolled from a plan for sales purpose or asking for consent in any format to further sales contacts.
- **DO NOT** call beneficiaries **who attended a sales event**, unless the beneficiary gave permission at the event for a follow-up call (**completed Permission-to-Contact form**) or visit (**completed Scope of Appointment form**): documentation of permission must be saved.

### Electronic Communication

- **DO NOT** initiate **separate electronic** contact (e.g., email, direct message, text message), unless an individual has agreed to receive those communications.
- **DO NOT** send electronic **communications** to individuals at email addresses or on social media obtained through friends or referrals.
- **DO NOT** rent or purchase email lists to distribute information about MA, MAPD or PDP plans.
- **DO** call your members to conduct normal business related to enrollment in the plan, including calls to members who have been involuntarily disenrolled to resolve eligibility issues.
- **MAY** under limited circumstances and subject to advance approval from CMS Regional Office, call **LIS-eligible members** that a plan is prospectively losing due to reassignment to encourage them to remain enrolled in their current plan.
- **DO** return beneficiary **phone calls** or messages.
- **DO** call your members to discuss **educational events**.

### Related Laws & Regulations

**MUST** follow all federal and state laws regarding confidentiality and disclosure of patient information. This includes compliance with provisions of HIPAA Privacy Rule and its specific rules pertaining to disclosures of beneficiary information. Additional information on HIPAA Privacy Rule can be found at <http://www.hhs.gov/ocr/privacy/>.

### Scope of Appointment (SOA)-MMG Section: 50.3

Personal or Individual Marketing Appointments typically take place in venues such as at home, library or coffee shop. CMS requires a SOA for all personal or individual face-to-face marketing appointments when reviewing MA, MAPD and PDP products. A signed SOA is a documented agreement between a Medicare beneficiary and an agent, broker or producer. A SOA lists the products agreed upon for discussion during the individual marketing appointment. CMS-approved SOA forms are available on ATRIO's Website.

- **DO NOT** market health care related products during marketing appointment if not agreed to before the meeting.
- **MUST** obtain a completed SOA before the appointment (48 hours in advance) when practical.
- **MUST** have beneficiary sign SOA at beginning of marketing appointment in cases where you did not obtain a SOA more than 48 hours in advance of appointment.
- CMS **DOES NOT** require SOA to attend formal or informal Medicare marketing/sales events, CMS views obtaining one as pressuring for personal contact information.

- **MUST** attach a copy of signed SOA to any application received from a personal/individual appointment before submitting application to ATRIO Health Plans.
- Scope of Appointments (SOA) **MUST** be in writing, in the form of a signed agreement by the beneficiary.
- **A completed SOA is NOT open-ended permission for future contact. A SOA is only valid for the duration of that transaction/appointment.**
- **MUST** notate on SOA in space provided an explanation why SOA was not obtained 48 hours in advance.
- **MAY** leave Medicare information at a beneficiary's residence if a pre-scheduled appointment at a beneficiary's residence becomes a no show.
- **MAY** call to confirm an appointment that has already been agreed to by a completed SOA.
- **DO** request beneficiary sign **second SOA** form during a face-to-face meeting if beneficiary wants to discuss other products not agreed upon for the initial appointment. **After second SOA is signed** for new product type, market appointment may continue.
- **DO** keep all SOA documentation for at least **10 years**, includes initial and additional SOA forms obtained at same appointment.
- SOA **MUST** be available upon request by CMS, ATRIO Health Plans.
- **DO NOT** discuss plan options or leave enrollment form or market products not agreed by beneficiary prior to the appointment.
- **DO NOT** return uninvited to beneficiary's home or place of residence even if an earlier appointment was not kept.
- **DO NOT solicit or accept enrollment applications for a January 1 effective date prior to start of AEP (October 15) unless beneficiary is entitled to Special Election Period (SEP) or is within their initial coverage election or initial enrollment period.**
- **DO NOT** market non-health care related products or leave brochures (i.e., annuities' or life insurance).

## Marketing/Sales Events-MMG Sections: 50.1, 50.2

Designed to steer, or attempt to steer, potential enrollees toward a plan or limited set of plans. Agents may discuss plan-specific information (i.e., premiums, cost sharing, and benefits), distribute health plan brochures and enrollment materials, distribute and collect applications, and perform enrollments.

Marketing of non-health care related products (i.e., annuities and life insurance) to beneficiaries during MA/MAPD marketing/sales seminars is considered **cross-selling** and is **PROHIBITED**.

### Two main types of marketing/sales events:

- **Formal:** a formal presentation provided typically in an audience/presenter style layout with agent, broker or producer formally providing specific plan or product information. (if only one person attends a formal event, you can discuss MA, MAPD or PDD product on an individual basis. If the attendee requests a full presentation, you must do one.)
- **Informal:** Conducted with a less structured presentation or in a less formal environment: typically utilizes a table, kiosk or recreational vehicle (RV) staffed by a plan representative who can discuss the merits of the plan's products. Beneficiaries **MUST** approach you first.

## Agent/Broker Activities, Oversight, and Compensation Requirements-MMG Sections : 110, 110.1, 110.3

### Compliance with State Licensure and Appointment Laws

**MUST** comply with applicable State licensure and/or appointment laws when engaging with marketing representative to sell Medicare products

### Plan Reporting of Terminated Agents

- **MUST** immediately report the termination of any agent/brokers to the State (adhering to state requirements for reporting terminations to the state) and the reason for the termination, if State law requires the reason to be reported.
- **MUST** report to CMS Account Managers any sales of Medicare Products, which were made by agents without a valid license.
- **MUST immediately terminate unlicensed agent/broker who submits enrollment application and report this action to the state.**
- **MUST** notify any beneficiaries who were enrolled by unqualified agents/brokers (e.g., unlicensed, not appointed, or has not completed the annual training/testing) and advise those beneficiaries of the agents'/brokers' status.

### Agent/Broker Training and Testing

- **MUST** ensure that all agent/brokers (employed/captive or independent) selling Medicare products are trained and tested annually on Medicare rules, regulations, and on details specific to the plan products that they sell.
- Agent/Broker **MUST** complete ATRIO's training and testing prior to selling Medicare product.
- **MUST successfully complete ATRIO certification test with an 85% or better within 3 attempts (after 3 test attempts ATRIO requires a 90 day period before retesting)**
- **MUST** provide current year **Medicare AHIP w/FWA** or Gorman equivalent certificate of completion.
- **MUST complete testing and have all necessary appointment documentation to ATRIO by October 1**

## Websites & Social/Electronic Media-MMG Section: 70

CMS and ATRIO Health Plans have strict website and social media guidelines.

- **MUST** maintain current contract year website for beneficiaries through December 31 of each year.
- **DO NOT** include content on website or on social/electronic media (i.e., Facebook, Twitter, YouTube, LinkedIn, Scan Code, or QR Code) for the next contract year.
- **MUST** contain all applicable CMS explanatory disclaimers and maintain separate and distinct section for Medicare information if other lines of business are also marketed. All marketing materials that include a web address for ATRIO Health Plans website **MUST** link directly to ATRIO Health Plan's Medicare specific pages.
- Websites **MUST** be compliant for people with disabilities as specified in Section 508 of the Rehabilitation Act
- **DO NOT** speak on behalf of CMS

- **DO NOT** take ATRIO Health Plan CMS-approved documents containing plan-specific information and add to non-CMS approved websites; **MUST** obtain ATRIO Health Plan's approval

#### Online Enrollments:

- Enrollment via a website other than one owned by ATRIO Health Plans, such as an agent/broker or other third part, website is **NOT** permitted. Enrollment requests **MAY** be submitted through the Medicare Online Enrollment Center (OEC)
- **DO NOT complete web enrollments over the phone under any circumstances**