

**Final CY 2017 Marketing Guidance for Minnesota  
Senior Health Options (MSHO) Plans  
Issued: August 26, 2016**

**Introduction**

All Medicare Advantage-Prescription Drug (MA-PD) and Special Needs Plan (SNP) plan sponsor requirements in the CY 2017 Medicare Marketing Guidelines (MMG), posted at <http://www.cms.gov/Medicare/Health-Plans/ManagedCareMarketing/FinalPartCMarketingGuidelines.html>, apply to Minnesota Senior Health Options (MSHO) Dual Eligible Special Needs Plans (SNPs) participating in the Minnesota Demonstration to Align Administrative Functions for Improvements in Beneficiary Experience.

This guidance document provides information only about those sections of the MMG that are not applicable or that are different for MSHO plans; therefore, this guidance document should be considered an addendum to the CY 2017 MMG. This MSHO plan guidance is applicable to all marketing done for CY 2017 benefits. The table below summarizes those sections of the CY 2017 MMG that are clarified, modified, or replaced for MSHO plans in this guidance.

**Table 1: Summary of Clarifications, Modifications, or Replacements of MMG Guidance**

<b>Medicare Marketing Guidelines (MMG) Section</b>	<b>Change in this Guidance Document</b>
Section 30.5.1 Multi-Language Insert	Clarifies the requirements of this section for MSHO plans.
Section 20 – Materials Not Subject to Marketing Review	Provides one exception to the list of materials not subject to marketing review and submission processes in this section of the MMG.
Section 50.1 – Federal Contracting Disclaimer	Replaces current disclaimer in this section with a new Federal-State disclaimer for MSHO plans.
Section 50.2 – Disclaimers When Benefits Are Mentioned	Replaces current disclaimers in this section with new disclaimers for MSHO plans.
Section 50.4 – Disclaimer on Availability of Non-English Translations	Replaces current disclaimer in this section with a new disclaimer for MSHO plans.
Section 50.5 – Disclaimer on SNP Materials	Replaces current disclaimer in this section with a new disclaimer for MSHO plans.
Section 50.6 – Disclaimer When Cost-Sharing is Mentioned on D-SNP Materials Targeting Potential Enrollees	Replaces current disclaimer in this section with a new disclaimer for MSHO plan materials that include Part D benefit information.

<b>Medicare Marketing Guidelines (MMG) Section</b>	<b>Change in this Guidance Document</b>
Section 50.12 – Disclaimer for Plans Accepting Online Enrollment Requests	Clarifies that the requirements of this section are not applicable to MSHO plans.
Section 50.18 – Pharmacy/Provider Directory and Formulary Disclaimers	Replaces current disclaimer in this section with a new disclaimer for MSHO plans.
Section 60.1 – Summary of Benefits (SB)	Replaces current guidance in this section with new guidance for MSHO plans.
Section 60.4 – Formulary and Formulary Change Notice Requirements	Clarifies the requirements of this section for MSHO plans. Extends the requirements for formulary change notifications to Medicaid- or additional plan-covered drugs.
Section 60.6 – Annual Notice of Change (ANOC) and Evidence of Coverage (EOC)	Clarifies the requirements of this section for MSHO plans.
Section 90 – The Marketing Review Process	Clarifies that references in this section (and subsections) to CMS in its role in marketing reviews also apply to the State.
Section 90.2.1 – Submission of Non-English and Alternate Format Materials	Clarifies that MSHO plans have state-specific MSHO errata codes.
Section 90.3 – HPMS Material Statuses Section 90.5 – Time Frames for Marketing Review	Clarifies the requirements of these sections with respect to the lack of “deeming” for jointly reviewed materials.
Section 100.3 – Electronic Enrollment	Clarifies that the requirements of this section are not applicable to MSHO plans.
Section 100.4 – Online Formulary, Utilization Management (UM), and Notice Requirements	Extends the formulary change notice requirements of this section to non-Part D drug formulary changes.

### ***Model Materials***

The State uses a collaborative MSHO Plan Member Materials Workgroup for development of model materials for MSHO plans under the demonstration, based on the integrated model materials developed for Medicare-Medicaid Plans participating in the CMS capitated financial alignment model demonstrations. MSHO plan-specific model materials, including a Summary of Benefits (SB), Annual Notice of Change (ANOC), Evidence of Coverage (Member Handbook), LIS Rider, comprehensive integrated formulary (List of Covered Drugs), combined Provider and Pharmacy Directory, and integrated enrollment form are updated annually and made available at: <http://cms.gov/Medicare->

MSHO plans must add required disclaimers in section 50 of this guidance and section 50 of the MMG, as appropriate. Adding required MSHO plan disclaimers to Part D models does not render the documents non-model when submitted for review or accepted as File & Use materials. In addition, CMS and Minnesota have streamlined antidiscrimination language between Medicare and state Medicaid requirements for inclusion in model marketing materials. All other required Part C and Part D model materials are unchanged under the Minnesota demonstration.

### ***Provider and Pharmacy Directory Requirements***

Starting for CY 2017, guidance related to Provider and Pharmacy Directories is no longer included in the MMG and is, instead, available in Chapter 4 of the Medicare Managed Care Manual and Chapter 5 of the Prescription Drug Benefit Manual. This guidance on general, update, dissemination and timing, online directories, disclaimers, and submission requirements for directories applies to MSHO plans' directories with the following modifications:

- MSHO plans are required to make available a single, combined Provider and Pharmacy Directory. Separate pharmacy and provider directories will not be permitted.
- The combined pharmacy/provider directory must include all network providers and pharmacies, regardless of whether they provide Medicare, Medicaid, or additional benefits.
- MSHO plans must use the model Provider and Pharmacy Directory document provided to by CMS and the State. A non-model directory is not permitted.
- The MSHO Provider and Pharmacy Directory is considered a marketing material and must be submitted in the HPMS marketing module. MSHO plans may obtain more information about the specific review parameters and timeframes for the Provider and Pharmacy Directory under the Minnesota demonstration in the Marketing Code Look-up functionality in the HPMS marketing module. In addition, we note that the guidance in section 110.2.6 of Chapter 4 of the Medicare Managed Care Manual regarding submission of updates and/or addenda pages does not apply to MSHO plans. MSHO plans must submit directory updates and/or addenda pages in HPMS for consistent with the parameters for review for the MSHO Provider and Pharmacy Directory.

### ***Compliance with Section 1557 of the Affordable Care Act of 2010***

MSHO plans should carefully review the guidance provided in the August 8, 2016 HPMS memorandum, "Guidance regarding implementation of the procedural requirements under the regulation implementing Section 1557 of the Affordable Care Act of 2010 – Nondiscrimination Communication Requirements and Grievance Procedures," for impacts on CY 2017 marketing and non-marketing materials. As provided in that guidance, MSHO Plans will be required to take steps to notify beneficiaries, enrollees, and prospective members of their rights and of covered entities' obligations under Section 1557.

We note that all model documents issued to MSHO plans by MMCO and the State under the Minnesota demonstration may be altered to include the required language about nondiscrimination and accessibility requirements (whether that is addition of the Nondiscrimination Notice (“Notice”) for significant communications and publications, or the Nondiscrimination Statement (“Statement”) for small-sized significant communications and publications) within the document. For CY 2017, MSHO plans will also be permitted to attach the Notice or Statement to the populated model materials Sample Notice and Statement language can be found at: <https://federalregister.gov/a/2016-11458>. MSHO plans are not expected to resubmit any previously submitted and/or approved marketing materials if the only purpose for their resubmission is addition of Notice/Statement and tagline information.

In addition, as clarified in the August 8, 2016 HPMS memorandum, MSHO plans must place an alternate language tagline in:

- The top 15 languages spoken by individuals with limited English proficiency (LEP) in Minnesota, as determined by the State, on significant communications and publications that are not small sized (note that this includes both marketing and non-marketing materials). The State will provide the document known as the Language Block to the MSHO plans that contains the 15 identified languages; and
- The top 2 languages spoken by individuals with LEP in Minnesota, as determined by the State, on small-sized significant communications and publications (note that this includes both marketing and non-marketing materials). The State will notify MSHO plans regarding which languages are the top two languages.

The August 8, 2016 HPMS memorandum provides more information about the types of documents that constitute significant communications and publications that are not small-sized as well as those that are small-sized.

Following are the MSHO plan-specific modifications to the MMG for CY 2017.

## **Section 20 – Materials Not Subject to Marketing Review**

The requirements of section 20 of the MMG apply to MSHO plans with the following modification:

- The MSHO plan Provider and Pharmacy Directory is considered a marketing material and must be submitted in the HPMS marketing module. MSHO plans may obtain more information about the specific review parameters and timeframes for the Provider and Pharmacy Directory under the Minnesota demonstration in the Marketing Code Look-up functionality in the HPMS marketing module.

### **Section 30.5.1 – Multi-Language Insert**

Consistent with the revised language for section 30.5.1 of the MMG provided in the August 8, 2016 HPMS memorandum, “Guidance Regarding Implementation of Nondiscrimination in Health Programs and Activities, under Section 1557 of the Affordable Care Act of 2010,” we clarify that MSHO plans will meet the requirements to include a Multi-Language Insert with their demonstration-specific SB and ANOC/EOC (Member Handbook) documents and enrollment form by using the State-provided document known as the Language Block. The Language Block will include at least the top 15 languages spoken by individuals with LEP in Minnesota, as determined by the State.

### **Section 50.1 – Federal Contracting Disclaimer**

This section is replaced with the following revised guidance:

#### **Section 50.1 – Federal and State Contracting Disclaimer**

42 CFR 422.2264, 423.2264

All marketing materials must include the statement that MSHO plans contract with both the Federal and the State government. MSHO plans should include the contracting statement either in the text or at the end/bottom of the piece. The following statement must be used:

“<Plan’s legal or marketing name> is a health plan that contracts with both Medicare and the Minnesota Medical Assistance (Medicaid) program to provide benefits of both programs to enrollees. Enrollment in <plan’s legal or marketing name> depends on contract renewal.”

NOTE: In addition to the exceptions noted in the introduction to section 50 of the MMG, radio and television, and Internet banner ads do not need to include the Federal and State contracting disclaimer.

## **Section 50.2 – Disclaimers When Benefits Are Mentioned**

This section is replaced with the following revised guidance:

### **Section 50.2 – Disclaimers When Benefits Are Mentioned**

42 CFR 422.111(a), 422.111(b), 422.111(f), 423.128(b)

The following disclaimers must be used when benefit information is included in marketing materials:

Only for summary documents like the SB: “This is not a complete list. The benefit information is a brief summary, not a complete description of benefits. For more information call Member Services or read the Member Handbook.”

“Limitations [, copayments/copays,] and restrictions may apply. For more information, call Member Services or read the Member Handbook.”

“Benefits [and/or copayments/copays] may change on January 1 of each year.”

## **Section 50.4 – Disclaimer on Availability of Non-English Translations**

This section is replaced with the following revised guidance:

### **Section 50.4 – Disclaimer on Availability of Non-English Translations**

42 CFR 422.2264(e), 423.2264(e)

Plans that meet either: (1) Medicare’s five (5) percent threshold for language translation (refer to section 30.5) or (2) the relevant Medicaid translation standard must place the following alternate language disclaimer on all marketing materials:

“This information is available for free in other languages. Call Member Services at the number at the bottom of this page.”

The alternate language disclaimer must be provided in both English and all non-English languages that meet the more stringent of either the Medicare or the Medicaid translation standard. The non-English disclaimer must be placed below the English version and in the same font size as the English version.

NOTE: Member ID Cards are excluded from this requirement. Radio, print ads, and post cards are only required to include the disclaimer in the same language as the ad.

## **Section 50.5 – Disclaimer on SNP Materials**

The requirements of this section of the MMG apply to MSHO plans, but MSHO plans may modify the disclaimer in the MMG as follows:

“<Plan name> has a Model of Care approved by the National Committee for Quality Assurance (NCQA) and Minnesota until <last contract year of NCQA and State approval of Model of Care> based on a review of <plan name>’s Model of Care.”

## **Section 50.6 – Disclaimer When Cost-Sharing is Mentioned on D-SNP Materials Targeting Potential Enrollees**

This section is replaced with the following revised guidance:

### **Section 50.6 – Disclaimer When Cost-Sharing is Mentioned on D-SNP Materials Targeting Potential Enrollees**

42 CFR 422.4(a)(1)(iv), 422.111(b)(2)(iii), 422.2264, 423.2264

The following disclaimer must be on any MSHO plan materials that mention Part D benefits unless the plan charges \$0 copays for all Part D drugs:

“[Copayments/Copays] for prescription drugs may vary based on the level of Extra Help you get. Please contact the plan for more details.”

## **Section 50.12 Declaimer for Plans Accepting Online Enrollment Requests**

This section does not apply to MSHO plans as the Online Enrollment Center on the Medicare Plan Finder website may not be used by MSHO plans.

## **Section 50.18 – Pharmacy/Provider Directory and Formulary Disclaimers**

This section is replaced with the following revised guidance:

### **Section 50.15 – Provider and Pharmacy Directory and Formulary (List of Covered Drugs) Disclaimers**

42 CFR 422.111(a) and (b), 423.128(a) and (b)

The following disclaimer must be included on materials whenever the formulary (List of Covered Drugs) or provider and pharmacy networks are mentioned:

“The List of Covered Drugs and/or pharmacy and provider networks may change throughout the year. We will send you a notice before we make a change that affects you.”

## **Section 60.1 – Summary of Benefits (SB)**

This section is replaced with the following revised guidance:

### **Section 60.1 – Summary of Benefits (SB)**

42 CFR 422.111(b)(2), 422.111(f), 423.128(b)(2)

MSHO plans must use the Summary of Benefits (SB) model document provided by CMS and the State. The SB must contain a concise description of the important aspects of enrolling in the plan, as well as the benefits offered under the plan, including applicable copays, applicable conditions and limitations, and any other conditions associated with receipt or use of benefits.

The Multi-Language Insert must be included with the SB, and the SB must be sent in other languages, if applicable per the requirements of Section 30.5 of the MMG. We clarify that MSHO plans will meet the requirements to include a Multi-Language Insert with their demonstration-specific SB by using the State-provided document known as the Language Block.

## **Section 60.4 – Formulary and Formulary Change Notice Requirements**

The requirements of section 60.4, 60.4.1, 60.4.2, 60.4.3, 60.4.4, 60.4.5, and 60.4.6 of the MMG apply to MSHO plans with the following modifications:

- MSHO plans must provide a comprehensive integrated formulary (List of Covered Drugs) that includes Medicare and Medicaid outpatient prescription drugs and pharmacy products provided under the plan;
- MSHO plans are only permitted to provide a comprehensive, not abridged, formulary (List of Covered Drugs);
- MSHO plans must use the model formulary document provided to Minnesota MSHO plans by CMS and the State; and
- Formulary change notices must be sent for any negative formulary change (as described in section 30.3.3, “Midyear Formulary Changes,” and section 30.3.4, “Provision of Notice Regarding Formulary Changes,” of Chapter 6 of the Prescription Drug Benefit Manual), regardless of whether the negative formulary change applies to an item covered under Medicare or Medicaid, or as an additional drug benefit under the plan. Consistent with the guidance in the MMG, this notice must be provided to affected enrollees at least 60 calendar days prior to the change.

## **Section 60.6 – Annual Notice of Change (ANOC) and Evidence of Coverage (EOC)**

We clarify that, in addition to the requirements of section 60.6 of the MMG, MSHO plans must use the Annual Notice of Change and Evidence of Coverage (Member Handbook) model document provided by CMS and the State.

MSHO Plans must use an errata notice to notify enrollees of any errors in their original mailings. An ANOC/EOC errata model MSHO plans may use is posted at: <https://www.cms.gov/Medicare-Medicaid->



[Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/FinancialAlignmentInitiative/InformationandGuidanceforPlans.html](#). We clarify that errata notices should only be used to notify enrollees of plan errors in plan materials. Any mid-year changes, including but not limited to mid-year legislative benefit additions or removals and changes in enrollment policies, should be communicated to current enrollees consistent with section 60.7 of the MMG

## **Section 90 – The Marketing Review Process**

Any references in this section, and in all subsections thereunder, to CMS in its role in reviewing marketing materials are also references to the State for purposes of MSHO plan marketing material review.

### **Section 90.2.1 – Submission of Non-English and Alternate Format Materials**

The requirements of this section apply without modification. We note, however, that MSHO plans should use state-specific MSHO errata codes. For more information about errata codes, MSHO plans should consult the Marketing Code Look-up functionality in the HPMS marketing module.

### **Section 90.3 – HPMS Material Statuses**

We clarify that, for purposes of MSHO plan materials, there is no “deeming” of materials requiring either a dual review by CMS and the State or a one-sided State review, and materials remain in a “pending” status until the State and CMS reviewer dispositions match. Materials that require a CMS-only review deem after the respective 10- or 45-day review period. MSHO plans may obtain more information about the specific review parameters and timeframes for marketing materials under the Minnesota demonstration in the Marketing Code Look-up functionality in the HPMS marketing module. All other guidance in this section of the MMG and its subsections applies.

### **Section 90.5 – Time Frames for Marketing Review**

We clarify that, for purposes of MSHO plan materials, there is no “deeming” of materials requiring either a dual review by CMS and the State or a one-sided State review, and materials remain in a “pending” status until the State and CMS reviewer dispositions match. Materials that require a CMS-only review deem after the respective 10- or 45-day review period. MSHO plans may obtain more information about the specific review parameters and timeframes for marketing materials under the Minnesota demonstration in the Marketing Code Look-up functionality in the HPMS marketing module. All other guidance in this section of the MMG and its subsections applies.

## **Section 100.3 - Electronic Enrollment**

We clarify that MSHO plans are not permitted to accept enrollment requests through the Online Enrollment Center (OEC).

**Section 100.4 – Online Formulary, Utilization Management (UM), and Notice Requirements**

Formulary change notices applicable to all formulary changes (not just Part D drug changes) must be maintained on MSHO plans' websites as required in this section. All other guidance in this section applies without modification.