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# CMS Manual System

## Pub. 100-11 Programs of All-Inclusive Care for the Elderly (PACE) Manual

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Department of Health & Human Services (DHHS)  
Centers for Medicare & Medicaid Services (CMS)

Transmittal 4

Date: August 30, 2013

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**Transmittal 3 dated August 16, 2013 is being replaced by Transmittal 4, dated August 30, 2013. The previous transmittal page erroneously omitted the deletion of manual sections 20.1-Marketing Plan, 20.2 – Non-English Materials, 30.1-Timeframes, and 30.2- Approval or Disapproval. This transmittal page correctly reflects these deleted sections. All other information remains the same.**

**SUBJECT: PACE Marketing Guidelines**

### **I. SUMMARY OF CHANGES: Revised Marketing Guidelines for PACE**

**NEW/REVISED MATERIAL - EFFECTIVE DATE\*: May 8, 2013**

**IMPLEMENTATION DATE: October 29, 2013**

*Disclaimer for manual changes only: The revision date and transmittal number apply to the red italicized material only. Any other material was previously published and remains unchanged. However, if this revision contains a table of contents, you will receive the new/revised information only, and not the entire table of contents.*

### **II. CHANGES IN MANUAL INSTRUCTIONS: (N/A if manual not updated.)**

**(R = REVISED, N = NEW, D = DELETED) – (Only One Per Row.)**

<b>R/N/D</b>	<b>CHAPTER/SECTION/TITLE</b>
<b>R</b>	3/Table of Contents
<b>R</b>	3/10/Introduction
<b>R</b>	3/20/General Marketing Requirements
<b>N</b>	3/20.10/Studies or Statistical Data
<b>N</b>	3/20.20/Font Size
<b>N</b>	3/20.30/Footnote Placement
<b>N</b>	3/20.40/Prohibited Terminology/Statements
<b>N</b>	3/20.50/Product Endorsement/Testimonials
<b>N</b>	3/20.60/Telephone Hold Time Messages
<b>D</b>	3/20.1/Marketing Plan
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<b>R</b>	3/30/Incentives, Promotional Activities, Events, and Outreach
<b>N</b>	3/30.10/Nominal Gifts
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<b>D</b>	3/30.1/Timeframes
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- D 3/30.3/Deemed Approval
- R 3/40/Prohibited Practices
- R 3/50/PACE Organizations with Non-English Speaking Populations and Availability of Non-English Translations
- N 3/60/Accessibility of Marketing Materials
- N 3/70/Use of TTY Numbers
- N 3/80/Potential Participant Contact
- N 3/90/The Marketing Review Process
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- N 3/140/Social Networking Sites
- N 3/Appendix 1/Definitions
- N 3/Appendix 2/Related Laws and Regulations

**III. FUNDING: NA**

**IV. ATTACHMENTS:**

	<b>Business Requirements</b>
<b>X</b>	<b>Manual Instruction</b>
	<b>Confidential Requirements</b>
	<b>One-Time Notification</b>
	<b>Recurring Update Notification</b>

**\*Unless otherwise specified, the effective date is the date of service.**

*Program* of All-Inclusive  
Care for the Elderly  
(PACE)  
Chapter 3 - Marketing *Guidelines*

*(Rev. 4, Issued: 08-30-13)*

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## **10 - Introduction**

***(Rev. 4, Issued: 08-30-13 Effective: 05-08-13, Implementation: 10-29-13)***

*The PACE Marketing Guidelines reflect the Centers for Medicare & Medicaid Services' (CMS) interpretation of the marketing requirements and related provisions of the Program of All-Inclusive Care for the Elderly (PACE) rules (Chapter 42 of the Code of Federal Regulations, Part 460. See Appendix 2 for a list of related laws and regulations.) The PACE Marketing Guidelines are for use by PACE Organizations (POs).*

*It is the PO's responsibility to have a system in place that ensures all materials used in the marketplace meet current regulations and guidance. Moreover, the examples of marketing materials and promotional activities given in *this guidance* are not all-inclusive. POs should apply the principles outlined in *this guidance* to all relevant decisions, situations, and materials. Any new *rulemaking* or interpretative guidance, *such as a* Health Plan Management System (HPMS) *memorandum*, may update the marketing guidance provided here. *Specific questions regarding a marketing material or marketing practice should be directed to the PO's CMS Regional Account Manager. The CMS Regional Account Manager collaborates with the State administering agency (SAA) in responding to PACE marketing questions and in the review and approval of PACE marketing materials.**

*POs are responsible for following all Federal and State laws regarding confidentiality and disclosure of participant information for marketing purposes. POs are responsible for ensuring compliance with any specific State requirements for PACE marketing material. This obligation includes compliance with the provisions of the HIPAA Privacy Rule and its specific rules regarding uses and disclosures of participant information (see Appendix 2).*

## **20 - General Marketing Requirements**

***(Rev. 4, Issued: 08-30-13 Effective: 05-08-13, Implementation: 10-29-13)***

### ***20.10 - Studies or Statistical Data***

***(Rev. 4, Issued: 08-30-13 Effective: 05-08-13, Implementation: 10-29-13)***

*POs may refer to the results of studies or statistical data in relation to customer satisfaction, quality, or cost as long as specific study details are given. At a minimum, study details need to be included in the material (either in the text or as a footnote) along with the source and date. POs should also disclose information on the relationship they have with the entity that conducted the study, if applicable.*

*When submitting material to CMS for review, the PO must provide to CMS the reference(s) used in the marketing material, the date(s) of study/studies, sample size, and the number of POs surveyed (unless the study that is referenced is a CMS study). Examples of material submission processes for POs referencing studies or statistical data may include the following:*

*If a PO uses study data that includes aggregate marketplace information on several other POs, it will not be required to submit data on all POs included in the study. However, the study details, such as the number of POs included, must be disclosed;*

*If a PO references a CMS study, it should include reference information (e.g., publication, date, page number) in the HPMS Marketing Material Transmittal comments field or as a comment on a separate page if the PO is not submitting the materials through HPMS. However, the PO is prohibited from using CMS, Medicare, or the Department of Health & Human Services (DHHS) logos; and*

*If a PO references non-CMS sponsored studies, it should submit the reference(s), sample size, and number of POs surveyed in the HPMS Marketing Material Transmittal comments or as a comment on a separate page if the PO is not submitting the materials through HPMS.*

*The CMS Regional Account Manager may request additional information to help facilitate the review of submitted materials.*

## **20.20 - Font Size**

**(Rev. 4, Issued: 08-30-13 Effective: 05-08-13, Implementation: 10-29-13)**

*All materials, including footnotes and internal tracking numbers, should be printed with a font size equivalent to or larger than Times New Roman twelve (12) point. The equivalency standard applies to both the height and width of the font.*

*Note: The 12-point font for Internet marketing materials refers only to how the PO codes the font for its Web page. CMS and/or the PO cannot control how the font may actually appear on an individual user's computer screen.*

*Exception: Logos and tags do not have to be printed with a 12-point font or larger.*

## **20.30 - Footnote Placement**

**(Rev. 4, Issued: 08-30-13 Effective: 05-08-13, Implementation: 10-29-13)**

*POs should adopt a standard procedure for footnote placement. Footnotes should appear either at the end of the document or the bottom of each page and in the same place throughout the document.*

## **20.40 - Prohibited Terminology/Statements**

**(Rev. 4, Issued: 08-30-13 Effective: 05-08-13, Implementation: 10-29-13)**

*In order to ensure accurate and fair marketing by all POs, CMS prohibits the distribution of marketing materials that are materially inaccurate, misleading, or otherwise make material misrepresentations. This requirement extends to contractors that may be directly or indirectly involved in marketing the PO.*

*POs may not:*

*Misrepresent themselves, their organizations, or their covered benefits and services;*

*Claim within their marketing materials that they are recommended or endorsed by the DHHS, CMS or Medicare. This includes use of the DHHS name and logo, CMS's name and logo and the words "Medicare" or "Medicaid" in a manner that conveys the false impression that such item is approved, endorsed, or authorized by DHHS or CMS;*

*Use absolute superlatives (e.g., "the best", "highest ranked", "rated number 1") unless they are substantiated with supporting data (e.g., studies, research publication) provided to CMS as a part of the marketing review process; or*

*Compare their PO(s) to another PO, by name, unless they have written concurrence from all POs being compared (e.g., studies or statistical data must be included when the material is submitted for review).*

*POs may:*

*State that the PO is approved for participation in the Medicare/Medicaid programs and/or that it is authorized to administer Medicare/Medicaid benefits;*

*Use the term "Medicare covered" or "Medicaid covered" to describe the benefits and services within their marketing materials; and*

*Use qualified superlatives (e.g., "one of the best", "among the highest ranked").*

*This guidance regarding the use of unsubstantiated statements does not apply to logos/tag lines. POs may use unsubstantiated statements in their logos and in their product tag lines (e.g., "Your health is our major concern", "Quality care is our pledge to you", "XYZ PO means quality care"). This latitude is allowed only in logo/product tag line language; such unsubstantiated claims cannot be used in general advertising text. Moreover, the use of superlatives is not permitted in logos/product tag lines (e.g., "XYZ PO means the first in quality care", "XYZ means the best in long-term care").*

## **20.50 - Product Endorsements/Testimonials** **(Rev. 4, Issued: 08-30-13 Effective: 05-08-13, Implementation: 10-29-13)**

*In order to avoid being misleading, product endorsements and testimonials must adhere to the following guidelines:*

*The speaker or endorser must identify the PO by name;*

*A PACE participant may offer endorsement or promote a specific program, provided the individual is a current participant or family member of a current participant of the program being endorsed or promoted and has given signed consent for the PO to use their promotional statements and/or photos. If the*



*individual is paid to endorse or promote the program, this must be clearly stated (e.g., “paid endorsement”); and*

*An individual, such as an actor, may be paid to portray a real or fictitious situation, provided the ad clearly states it is a “Paid Actor Portrayal.”*

*Product endorsements and testimonials cannot:*

*Include anonymous or fictitious quotes, by physicians, health care providers, and /or by Medicare/Medicaid participants not enrolled in the PO; or*

*Use negative testimonials about other programs.*

*CMS may ask for a list of testimonials and release forms prior to reviewing/approving. POs must comply with any requests for such information.*

### **20.60 - Telephone Hold Time Messages**

***(Rev. 4, Issued: 08-30-13 Effective: 05-08-13, Implementation: 10-29-13)***

*Hold time messages (recorded information played to a caller while waiting on hold) that discuss health-education features and other general information (e.g., hours of operation, flu shot reminders) or other generic statements such as “Thank you for holding” are not considered marketing materials.*

*Hold times for callers should be kept at a minimum. In addition, POs should not use hold messages as a means of marketing to new and/or current participants since the hold time may not allow the listener to hear the full message. Hold time messages that are produced with the primary intention of attracting/appealing to a potential participant and prompting them to request additional information, but do not contain detailed information about the program, eligibility, services or enrollment, are considered advertising/promotional material. These ads do not require CMS review. However, hold time messages that promote the plan or provide benefit information must be submitted as marketing material for State and CMS review and approval.*

## **30 - Incentives, Promotional Activities, Events, and Outreach**

***(Rev. 4, Issued: 08-30-13 Effective: 05-08-13, Implementation: 10-29-13)***

### **30.10 - Nominal Gifts**

***(Rev. 4, Issued: 08-30-13 Effective: 05-08-13, Implementation: 10-29-13)***

*CMS’s current definition of “nominal value” is an item worth \$15 or less, based on the retail value of the item. Promotional items/gifts for current PACE enrollees must meet this nominal value requirement. However, when a PO is offering pre-enrollment promotional items to potential enrollees, cash gifts are prohibited (even if the value is less than \$15). The pre-enrollment promotional gifts must be provided to the potential enrollees whether or not the individual enrolls in PACE. Referral incentives are not allowed.*

### **30.20 - Disclaimers Applicable to Advertising that Promotes a Nominal Gift**

*(Rev. 4, Issued: 08-30-13 Effective: 05-08-13, Implementation: 10-29-13)*

*POs must include a written statement on all advertising and explanatory materials promoting drawings, prizes or any promise of a free gift that there is no obligation to enroll in PACE. For example, “Eligible for a free drawing and prizes with no obligation” or “Free drawing without obligation.”*

### **40 - Prohibited Practices**

*(Rev. 4, Issued: 08-30-13 Effective: 05-08-13, Implementation: 10-29-13)*

*The following practices are prohibited:*

- *Discrimination of any kind, except that marketing may be directed to individuals eligible for PACE by reason of their age;*

*Activities that could mislead or confuse potential participants or misrepresent the PO, CMS, or the SAA;*

*Gifts or payments to induce enrollment (see discussion of Nominal Gifts in section 30);*

*Unsolicited door-to-door marketing which would equate to cold calling;*

*Direct one-on-one soliciting of participants for referrals; and*

*Pressuring, coercing or in any way inconveniencing PACE participants in an effort to gain referrals.*

### **50 – PACE Organizations with Non-English Speaking Populations and Availability of Non-English Translations**

*(Rev. 4, Issued: 08-30-13 Effective: 05-08-13, Implementation: 10-29-13)*

*All POs should have interpreter services available to assist non-English speaking participants. POs must provide printed copies of all marketing materials to prospective and current participants in English and any other principal languages of the community, as determined by the State.*

### **60 - Accessibility of Marketing Materials**

*(Rev. 4, Issued: 08-30-13 Effective: 05-08-13, Implementation: 10-29-13)*

*POs must make sure all marketing information is available in alternate formats so that it is accessible and appropriate for individuals who have disabilities (e.g., those with visual or hearing impairments). This includes providing documents in Braille, if necessary and/or requested. Reasonable accommodations for communicating marketing information must be made in accordance with the Americans with Disabilities Act and the Rehabilitation Act (see Appendix 2). CMS expects that a PO will make the necessary accommodations (providing the alternate format) as expeditiously as the situation*

*requires. A PO may substitute an audio format with the agreement of the current or prospective participant.*

## **70 - Use of TTY Numbers**

**(Rev. 4, Issued: 08-30-13 Effective: 05-08-13, Implementation: 10-29-13)**

*Per Section 501 and Section 504 of the Rehabilitation Act (see Appendix 2), a TTY number must appear in conjunction with the PO's customer service number in the same font size and style as the other phone numbers on marketing materials. POs can either use their own TTY number or State relay services, as long as the number included is accessible from TTY equipment. TTY customer service numbers must be toll-free. Exceptions to this requirement are:*

*In television ads, the TTY number need not be the same font size/style as other phone numbers since it may result in confusion and cause some prospective enrollees to call the wrong phone number. As an alternative, POs are allowed to use various techniques to sharpen the differences between TTY and other phone numbers on a television ad (e.g., using a smaller font size for the TTY number than for the other phone numbers); and*

*TTY numbers are not required in radio advertisements.*

## **80 - Potential Participant Contact**

**(Rev. 4, Issued: 08-30-13 Effective: 05-08-13, Implementation: 10-29-13)**

*POs and their contractors are prohibited from engaging in direct, unsolicited contact with non-referred potential participants, including outbound calls, with noted exceptions below.*

*Specifically, POs may not:*

*Make unsolicited outbound calls or send emails to potential participants/caregivers about other business as a means of generating leads for the PO;*

*Conduct unsolicited door-to-door marketing;*

*Call former participants who have disenrolled, or current participants who are in the process of disenrolling, as a means of re-enrolling or retaining these individuals;*

*Call or email potential participants who attended a PACE event, unless the individual gave express permission at the event for a follow-up call or email;*

*Advertise outside of its defined service area unless such advertising is unavoidable (e.g., advertising in print or broadcast media with a national audience or with an audience that includes some individuals outside of the service area); in this instance, the PO should clearly disclose their service area;*

*Confirm receipt of marketing information unless the marketing materials were requested by potential participants/caregivers;*

*Purchase or rent email lists; or*

*Email prospective participants at e-mail addresses obtained through friends or referrals.*

*POs may participate in the following activities:*

*Contact their participants/caregivers to conduct normal business related to enrollment in PACE, including calls to participants who have been involuntarily disenrolled to resolve eligibility issues;*

*Call former participants after the disenrollment effective date to conduct disenrollment surveys for quality improvement purposes. Disenrollment surveys may be done by phone or sent by mail, but neither calls nor mailings may include sales or marketing information;*

*Call or email participants who have expressly given permission for a PO or contractor to contact them and provide an opt-out process for participants/caregivers who no longer wish to receive e-mail communications;*

*Return potential participant/caregiver phone calls, messages, or emails, as these are not unsolicited calls;*

*Contact their participants/caregivers via an automated telephone notification to inform them about general information such as the availability of flu shots, upcoming PACE changes and other important PACE information; and*

*Call or email potential participants/caregivers based on referrals from unsolicited contacts. Note: POs may make an initial follow-up call or mailing to referrals by a participant's family, friends or neighbor, or from community partners and resources such as social workers, physician offices, and housing managers. However, if, upon initial contact, the potential member/caregiver shows no interest, further direct contact is prohibited.*

## **90 - The Marketing Review Process**

**(Rev. 4, Issued: 08-30-13 Effective: 05-08-13, Implementation: 10-29-13)**

*Marketing materials submitted with the PO's initial application are approved as part of the PACE application approval process. POs may not begin marketing until they have been approved and have received a copy of their program agreement signed by all parties. Except where otherwise noted, all marketing materials must be reviewed and approved prior to their use by the PO. CMS's marketing review process is detailed in this section.*

## **90.10 – PACE Organization Responsibilities**

**(Rev. 4, Issued: 08-30-13 Effective: 05-08-13, Implementation: 10-29-13)**

*Generally, CMS does not review marketing materials for typographical or grammatical errors, unless such errors render the marketing materials inaccurate or misleading. However, CMS may disapprove marketing documents that contain errors if they are identified and not corrected. POs are responsible for:*

*Conducting a quality check prior to submitting all marketing materials for review to CMS;*

*Ensuring compliance with any State-specific requirements for PACE marketing material; and*

*Including language in marketing materials that clearly states that participants may be fully and personally liable for the costs of unauthorized or out-of-PACE program agreement services. This is referred to as the “lock-in clause.”*

## **90.20 - Subcontractor Activities and Submission of Materials for CMS Review**

**(Rev. 4, Issued: 08-30-13 Effective: 05-08-13, Implementation: 10-29-13)**

*POs are responsible for all marketing activities undertaken by their contractors and for ensuring that all materials prepared by a contractor meet the requirements outlined in this guidance. Examples of contractors that may conduct marketing on behalf of a PO are transportation companies or home health aide agencies. If a contractor includes information regarding the PO in its marketing materials, the PACE-specific information must be submitted by the PO and reviewed and approved by CMS.*

## **90.30 - Material Submission Process**

**(Rev. 4, Issued: 08-30-13 Effective: 05-08-13, Implementation: 10-29-13)**

*After a PO has entered into a PACE program agreement, any new or revised marketing materials must be submitted to the CMS Regional Account Manager and the SAA for review.*

*For SAA marketing material submissions, POs should contact their SAA for State-specific instructions for submitting their marketing materials. Some SAAs may prefer prior review of marketing materials while other SAAs may prefer concurrent review.*

*POs should identify the type of marketing material that they are submitting with a label (e.g., flyer, brochure, print ad, etc.).*

*For CMS marketing submissions, POs may submit new or revised materials for CMS review through the Marketing Module of the HPMS or by mail, express mail, fax or other method as approved by the CMS Regional Account Manager.*

**90.40 - Submitting Marketing Material via HPMS**  
**(Rev. 4, Issued: 08-30-13 Effective: 05-08-13, Implementation: 10-29-13)**

*If POs choose to submit marketing materials to CMS through HPMS, the system can accept electronic copies of the actual marketing materials. Please see the HPMS Marketing Module User Guide for extensive information on how to use HPMS. The PO must have a CMS-issued User ID and password with HPMS access in order to log into the system. POs will also need to associate their User ID with their HPMS-assigned contract number (see Appendix 2).*

*Please note that if a PO chooses to withdraw a marketing material submission, the PO should submit a written request to its CMS Regional Account Manager or Marketing Reviewer which states the reason(s) for the withdrawal.*

*POs may use HPMS to enter all pertinent information related to a marketing material submission and attach the material in electronic format to the entry. The following are acceptable electronic formats for submitting these materials:*

*Zip files (.ZIP);  
Portable Document Format (.PDF);  
Microsoft Word (.DOC/DOCX);  
Joint Photographic Experts Group (.JPG);  
Microsoft Excel (.XLS/ .XLSX);  
DOS Text (.TXT);  
Graphics Interchange Format (.GIF); and  
WordPerfect (.WPD).*

*Other formats may be acceptable but must be agreed upon by the CMS Regional Account Manager prior to making the submission.*

**90.40.10 - Marketing Material Identification Number**  
**(Rev. 4, Issued: 08-30-13 Effective: 05-08-13, Implementation: 10-29-13)**

*If a PO opts to use HPMS, it must place a unique marketing material identification (ID) number in the specific format described below on all marketing materials. This ID will allow CMS to track the PO's marketing material within the marketplace and address participant inquiries, should they arise. This number is also used to track marketing materials in HPMS. The marketing material ID should be entered into HPMS in the same manner that it appears on the marketing material and is made up of two parts:*

*The first part is the PO's contract number (e.g., H1234) followed by an underscore;*

*The second part is any series of alpha-numeric characters chosen at the discretion of the PO.*

*An example of a complete marketing material ID would be: "H1234\_drugx38."*

*Note: The unique marketing material ID must be printed on the front page of all marketing materials, in the lower left or right hand corner.*

### **90.40.20 - Marketing Material Identification Number for Non-English or Alternate Format Materials**

**(Rev. 4, Issued: 08-30-13 Effective: 05-08-13, Implementation: 10-29-13)**

*Alternate formats are used to convey information to participants with disabilities (e.g., Braille, large print, audio). The translation/adaptation of approved English written marketing materials must be submitted with a letter of attestation. Non-English or alternate format materials submitted through HPMS must be given a unique marketing material ID. When submitting the materials, POs must utilize the proper drop down menu in HPMS to designate that they are non-English versions. Refer to the HPMS Marketing Module User Guide for further guidance.*

**NOTE:** *The approval date for non-English materials should be the date that appears on the English version.*

### **90.50 - Resubmitting Previously Disapproved Material**

**(Rev. 4, Issued: 08-30-13 Effective: 05-08-13, Implementation: 10-29-13)**

*To expedite the review of previously disapproved material, POs should clearly indicate all changes/updates made to the material when it is resubmitted. POs may meet this requirement by highlighting any text changes and/or inserting notes to altered areas of the material. POs may develop an alternative process for identifying changes (e.g., bulleting all changes made within the comments section of HPMS when submitting the marketing material) provided they discuss alternatives with and receive approval from the CMS Regional Account Manager.*

*Through this process, CMS expects that all areas changed from the first submission can be easily identified in the review process and reviewers can confidently complete reviews knowing POs have not altered the material in other ways. When resubmitting a marketing material piece through HPMS, the PO should insert language in the comments section attesting that no other areas have been altered outside of the identified changes. If the resubmission is outside of HPMS, the PO may resubmit directly to CMS by mail, express mail, fax or other method as approved by the CMS Regional Account Manager and make a similar attestation on a separate document.*

### **90.60 - Timeframes for Marketing Review**

**(Rev. 4, Issued: 08-30-13 Effective: 05-08-13, Implementation: 10-29-13)**

*All marketing materials are subject to State review and a CMS forty-five (45) day review period. If a decision has not been rendered by CMS on the forty-sixth (46<sup>th</sup>) day, the material will be deemed approved. The forty-five (45) day review period applies each time an individual marketing material is submitted to CMS for review. For example, if a material is submitted to CMS for review and on the thirty-second (32<sup>nd</sup>) day CMS renders the decision of disapproved, upon correcting the material's deficiencies and*



*resubmitting the piece, the forty-five (45) day review period starts anew. This new period begins on the date of receipt or HPMS submission.*

*Marketing materials submitted with a new application or expansion application are part of that application and are therefore on the same review clock of 90 days or 45 days, depending on the type of application. Marketing materials submitted with a new application may not be used prior to the application's approval and receipt of the signed three-way program agreement. Marketing materials submitted with an expansion application may not be used prior to approval and receipt of the revised pages to the three-way program agreement.*

## ***100 - CMS-Provided Language/Materials***

***(Rev. 4, Issued: 08-30-13 Effective: 05-08-13, Implementation: 10-29-13)***

### ***100.10 - Model Materials***

***(Rev. 4, Issued: 08-30-13 Effective: 05-08-13, Implementation: 10-29-13)***

*The National PACE Association (NPA) has developed marketing materials that have been approved by CMS and are considered model materials. However, all marketing materials are still subject to CMS review to ensure that marketing materials have not been altered, and are also required to be reviewed and approved by the State prior to use.*

### ***100.20 - Template Materials***

***(Rev. 4, Issued: 08-30-13 Effective: 05-08-13, Implementation: 10-29-13)***

*A "template material" is any marketing material that includes placeholders for variable data to be populated at a later time by a PO. Utilizing template materials allows a PO to submit one "master document." Variable elements can be specific to one PACE center or can apply to multiple PACE centers within the same PO. Examples of variable elements include PO name, address, phone number, URL's, etc.*

*Template material must be submitted to CMS and show how the placeholders will be populated by inserting the name of the field within greater than and less than signs (e.g., <PO name>), or populate the placeholder fields with all variables within the greater than and less than signs (e.g., <PO name Center A> <PO name Center B> <PO name Center C>). Template materials will have only one marketing identification number regardless of the number and combination of variable elements.*

## ***110 - Materials Not Subject to CMS Review***

***(Rev. 4, Issued: 08-30-13 Effective: 05-08-13, Implementation: 10-29-13)***

*The following items are materials that are not subject to CMS review and should not be submitted:*

*Privacy notices (which are subject to enforcement by the Office of Civil Rights);*



*Press releases that do not include any PACE-specific information (e.g., information about benefits, premiums, co-pays, deductible, benefits, how to enroll, networks, etc.);*

*Advertising/promotional materials (see definitions);*

*Banner and Banner-Like Advertisements (see definitions);*

*Outdoor Advertising (ODA) (see definitions);*

*Certain participant newsletters unless sections are used to encourage enrollment, disenrollment, or to communicate with members on product-specific information, e.g., benefits or coverage, participant operational policies, rules and/or procedures);*

*Blank letterhead/fax coversheets that do not include promotional language;*

*General health promotion materials that do not include any specific PO-related information and are educational in nature (e.g., health education and disease management materials);*

*Materials used in the education of participants, family members/caregivers, and Ad-Hoc Participant Communications (see definitions) that are not being distributed to potential participants, or that contain information that is not specific to PACE;*

*Participant surveys;*

*Newspaper and television press coverage (see Section 120 below for exceptions); and*

*Newsletters to Professional Referral Sources to keep them up-to-date on the PACE program.*

*Items that advertise the PO's name and provide contact information without providing more detailed information about the program, such as a billboard, bus or bench ad, etc., are not considered marketing materials. The purpose of these items is solely to get the consumer's attention and provide contact information so that they can request more information.*

*POs are still responsible for ensuring that all of these materials (see previous paragraph) meet the applicable requirements in this PACE marketing guidance. In addition, POs should have a means of tracking and maintaining these materials and making them available to CMS upon request.*

## ***120 - Radio and Television Advertisements***

***(Rev. 4, Issued: 08-30-13 Effective: 05-08-13, Implementation: 10-29-13)***

*Radio and television ads that are scripted and produced to include detailed information about the program, eligibility, services or enrollment must be submitted and reviewed as*

*marketing materials contain the general advertising disclaimer noted in §460.82(d)(2). This information may be worked into the script and/or shown on the screen in the form of a crawl or banner. Newspaper and television press coverage that involves a report or coverage of the PO is not considered marketing material and does not require CMS review.*

*Radio and television ads that are scripted and produced with the primary intention of attracting/appealing to a potential participant and prompting them to request additional information, but do not contain detailed information about the program, eligibility, services or enrollment, are considered advertising/promotional material and do not require CMS review.*

### **130 - Website**

***(Rev. 4, Issued: 08-30-13 Effective: 05-08-13, Implementation: 10-29-13)***

#### **130.10 - PACE Websites**

***(Rev. 4, Issued: 08-30-13 Effective: 05-08-13, Implementation: 10-29-13)***

*All PO websites must be compliant with web-based technology and information standards for people with disabilities, such as those specified in section 508 of the Rehabilitation Act which pertains specifically to government-sponsored websites (see Appendix 2).*

#### **130.20 - Website Requirements**

***(Rev. 4, Issued: 08-30-13 Effective: 05-08-13, Implementation: 10-29-13)***

*A PO's web page may include information on the PO's mission, history, contact information, and services. All marketing materials that include a web address for the PO's website should link directly to the PO's homepage.*

*Note: If POs elect to have a website, the web address should be provided in the HPMS contract management module.*

*CMS expects that POs will design their website(s) with participants and caregivers as their primary audience. POs may provide access to its other lines of business on its website. However, to avoid participant or caregiver confusion, any links provided to health-related or non-health related products/services must be clearly labeled as such to allow the participant or caregiver to make an informed decision and understand that by clicking on those links, he/she will be leaving PACE-specific web pages and content.*

*Any marketing materials posted on the PO website must meet the general marketing requirements in Section 20 and be approved by CMS and the SAA.*

### **140 - Social Networking Sites**

***(Rev. 4, Issued: 08-30-13 Effective: 05-08-13, Implementation: 10-29-13)***

*POs are permitted to use social media (e.g., Facebook, Twitter) to promote the PACE program to potential participants. The marketing content on the home page is considered marketing materials and must meet all PACE marketing regulations and guidelines. The*

*home page/profile page must be submitted for review and approved by the SAA and the appropriate CMS marketing reviewer before going live.*

*The proposed content can be submitted in any format. If uploading the site in HPMS, POs should submit screenshots of the proposed site unless they can provide a link to the production site. POs must upload proposed networking sites under the same HPMS code used for Internet Web pages.*

*Individual posts, which are meant to be frequent and interactive, are not required to be submitted for review. However, POs are expected to monitor public comments to ensure inaccurate information is removed immediately.*

## ***Appendix 1 - Definitions***

***(Rev. 4, Issued: 08-30-13 Effective: 05-08-13, Implementation: 10-29-13)***

### ***Ad-hoc Participant Communications Materials***

*Ad-hoc participant communications materials are informational materials that are targeted to current participants or customized/limited to a subset of participants. They do not include information about the PO's benefit structure. They apply to specific situations or cover participant specific processes or other operational issues. These materials are not considered marketing materials.*

### ***Advertising/Promotional Materials***

*Advertising/promotional materials are primarily intended to attract or appeal to a potential enrollee. Advertising materials contain less detail than other marketing materials, and may provide benefit information at a level to entice a potential enrollee to request additional information.*

### ***Alternate Formats***

*Alternate formats are methods/forms of communication used to convey information to participants with disabilities (e.g., Braille, large print, and audio). Reasonable accommodations for communicating marketing information must be made.*

### ***Banner and Banner-Like Advertisements***

*Banner advertisements are typically used in television ads and flash information quickly across a screen with the sole purpose of enticing a prospective enrollee to contact the PO to enroll or request more information. A "banner-like" advertisement is usually in some media other than television, (e.g., outdoor advertising and internet banner ads), and is intended to be very brief and to entice someone to call the PO or to alert someone that information is forthcoming. These types of advertisements are considered informational and not considered marketing materials.*

### ***Enrollment Materials***

*Enrollment materials are used to enroll or disenroll a participant from a PO. These materials are used to convey information specific to enrollment and disenrollment issues. Enrollment materials that are used prior to enrollment are considered marketing materials (see Appendix 2).*

### ***Health Plan Management System (HPMS)***

*HPMS is a web-enabled information system that serves a critical role in supporting the implementation and ongoing operations of POs. HPMS and its software modules may be used by POs to enter, track and maintain marketing materials submitted to CMS for review and approval.*

### Lock-in Clause

*Language included in the marketing materials that clearly states that PACE participants may be fully and personally liable for the costs of unauthorized or out-of-PACE program agreement services.*

### Marketing Materials

*Marketing materials are information POs provide to the public about its program. Marketing materials can be used to educate prospective participants. These materials must be approved by CMS and the SAA.*

### Nominal Value

*Nominal value is currently defined by CMS as an item worth \$15 or less, based on the retail value of the item. Any promotional activity or item (i.e., gift) offered by POs, including those that will be used to encourage retention of participants, must be of nominal value. (Note: CMS sets the maximum, not the minimum, for nominal value.)*

### Outdoor Advertising (ODA)

*Outdoor advertising is outdoor marketing intended to capture the attention of a passing audience (e.g., billboards, signs attached to transportation vehicles), and to influence them to request more detailed information on the product being advertised.*

### PACE

*PACE means the Program of All-inclusive Care for the Elderly, a managed care Medicare/Medicaid program authorized under sections 1894, 1905(a), and 1934 of the Social Security Act and Chapter 42 of the Code of Federal Regulations, Part 460 (see Appendix 2).*

### PACE Program Agreement

*A PACE program agreement is an agreement between a PO, CMS, and the SAA that contains pertinent policies and procedures of the PO and the SAA, and specific contractual requirements from CMS. A PO may operate in the State only in accordance with a PACE program agreement.*

### Template Material

*A template material is any marketing material that includes placeholders for variable data to be populated at a later time.*

### Web Address

*A web address is an address that is typed into the web browser, also known as a Universal Resource Locator (URL).*

## **Appendix 2 - Related Laws and Regulations**

**(Rev. 4, Issued: 08-30-13 Effective: 05-08-13, Implementation: 10-29-13)**

### **Chapter 42 of the Code of Federal Regulations Part 460**

The PACE regulations can be found at <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&rgn=div5&view=text&node=42:4.0.1.3.16&idno=42>

### **Privacy and Confidentiality**

Additional information on the HIPAA Privacy Rule and its disclosure requirements can be found at <http://www.hhs.gov/ocr/privacy/>

### **Americans with Disabilities Act**

Additional information on the Americans with Disabilities Act can be found at <http://www.ada.gov/>

### **Sections 501 and 504 of the Rehabilitation Act**

Additional information on sections 501 and 504 of the Rehabilitation Act can be found at <http://www.dol.gov/oasam/regs/statutes/sec504.htm> and [http://transition.fcc.gov/cgb/dro/504/disability\\_primer\\_1.html](http://transition.fcc.gov/cgb/dro/504/disability_primer_1.html)

### **HPMS, Connectivity Guide and User Instructional Guides**

Additional information can be found at <https://gateway.cms.gov>

### **Section 508 of the Rehabilitation Act**

(Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended by the Workforce Investment Act of 1998 (P.L. 105-220), August 7, 1998)

All POs that choose to create and maintain an Internet website must ensure that it is compliant with web-based technology and information standards for people with disabilities as specified in section 508 of the Rehabilitation Act. For additional information, please go to the following website address: <http://www.section508.gov>

Note: These Federal requirements are extended to all plan sponsors through the requirements for non-discrimination under Federal grants and programs (29 USC §794).

### **Enrollment and Disenrollment**

Additional information on Enrollment and Disenrollment can be found in the PACE Manual at <http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Internet-Only-Manuals-IOMs-Items/CMS019036.html>

### **Sections 1894, 1905(a) and 1934 of the Social Security Act**

Additional information on the Social Security Act can be found at [https://www.socialsecurity.gov/OP\\_Home/ssact/title18/1894.htm](https://www.socialsecurity.gov/OP_Home/ssact/title18/1894.htm); [https://www.socialsecurity.gov/OP\\_Home/ssact/title19/1934.htm](https://www.socialsecurity.gov/OP_Home/ssact/title19/1934.htm) and [https://www.socialsecurity.gov/OP\\_Home/ssact/title19/1905.htm](https://www.socialsecurity.gov/OP_Home/ssact/title19/1905.htm)