Rhode Island EOHHS Guidelines for Marketing and Member Communications for Medicaid Managed Care Program, RIte Smiles, Non-Emergency Medical Transportation and Medicare-Medicaid Program (ad hoc)

RI Executive Office of Health and Human Services

April 1, 2019

INTRODUCTION

EOHHS requires the review and prior approval of all materials related to or containing information that is intended to be used for education, outreach or marketing purposes for Plan enrollees or prospective enrollees. For the purposes of this guidance, "Plans" refers to a managed care organization (MCO), non-emergency medical transportation (NEMT) and Rite Smiles and its subcontractors including Accountable Entities, sub-contractors and vendors. Plans are required to comply with the information requirements and marketing guidelines under 42 C.F.R. Section 438.10 and 438.104, EOHHS Marketing Guidelines For Marketing and Member Communications for RI's Medicaid Managed Care Program, Non-Emergency Medical Transportation and Medicare-Medicaid Program (ad hoc materials) as well as the Contract Between EOHHS and Health Plan for Medicaid Managed Care Program, Contract Between EOHHS and MTM for Non-Emergency Medical Transportation and the Contract Between EOHHS and UnitedHealth Care Insurance Company for the Medicaid Rite Smiles Program. For this guidance MMP (ad hoc) materials refers to general health promotion materials that do not include MMP related information and are not included in Chapter 3 of the Medicare Managed Care Manual, Medicare Marketing Guidelines and Prescription Drug Benefit Manual, Chapter 2.

- Plans must comply with all contractual requirements related to marketing and member communication materials.

- Plan sponsors are responsible for ensuring compliance with current marketing regulations and guidance, including monitoring and overseeing the activities of their subcontractors, downstream entities, and/or delegated entities.

- **EOHHS reserves the right to conduct an audit of the plan's advertising, marketing, outreach or member materials at any time.**

These *Guidelines* are to be used for all marketing and member communication activities under Rhode Island's Medicaid managed care program, Medicare-Medicaid Program (MMP) ad hoc enrollee communication materials and Non-emergency Medical Transportation (NEMT) member communications.
This includes the RIte Care, Children with Special Health Care Needs (CSHCN), Rhody Health Partners, RIte Smiles

When engaged in marketing its programs or in marketing targeted to potential or current members, the Plan:

- shall not distribute marketing materials to less than the entire service area
- shall not distribute marketing materials without the approval of EOHHS
- will not seek to influence enrollment in the Health Plan in conjunction with the sale or offering of private insurance;
- will not, directly or indirectly, engage in unsolicited door-to-door, telephone, or other cold call marketing activities.

As used in this guidance:

Cold Call Marketing

Cold call marketing means any unsolicited personal contact by the Contractor with a potential enrollee for the purpose of marketing as defined in 42 CFR 438.104

Marketing

Marketing means any communication, from the Contractor to a Medicaid recipient who is not enrolled in Medicaid Managed Care or the Contractor that can reasonably be interpreted as intended to influence the recipient to enroll in Medicaid Managed Care. CFR 438.104

Marketing Materials

Marketing materials means materials that are produced in any medium, by or on behalf of the MCO or their subcontractors that can reasonably be interpreted as intended to market to Potential Enrollees or Enrollees to change Health Plans.

Member Materials/Communications

Member materials include, but are not limited to member handbooks, provider directories, member newsletters, identification cards, fact sheets, notices, brochures, form letters, mass mailings, system generated letters, newspaper, TV and radio advertisements, call scripts, surveys and other materials as identified by EOHHS.

Contract Requirements

Each MCO, NEMT and MMP must comply with all the contractual requirements related to marketing and member materials/communications.

ATTACHMENTS

Attachment A_Non-discrininatio

Attachment B_ Marketing Materials

Attachment C RI EOHHS_ Document I

MARKETING AND MEMBER COMMUNICATIONS

*Please see General marketing approaches and activities at the end of this document

Formats

Formats subject to these *Guidelines* may be in any format including, but not limited to:

- written,
- audio,
- visual,
- digital or
- electronic format

Materials and Communications Requiring State Review

Materials requiring State review include but is not limited to:

- welcome materials, identification cards,
- health plan education materials,
- website content, directories, member handbooks
- brochures, posters, member newsletters, fact sheets, surveys
- notices, form letters, mass mailings, system generated letters, call scripts,
- newspaper, TV and radio advertisements,
- any other marketing or member communication materials as identified by EOHHS.

Communication with Media Source

- Plans can communicate with the media when contacted by a media source.
- All Plan press releases must be reviewed and approved by EOHHS prior to distribution or release

Limited English Proficiency (LEP) Requirements

All Plans written materials, that are essential to enrollee's obtaining services, (including, at a minimum, provider directories, member handbooks, appeal and grievance notices, and denial and termination notices), must contain an explanation that the following alternative forms of communication are available upon request and at no cost, to the potential or current enrollees. [**ATTACHMENT A**]

Written materials must include the following:

- taglines in the state's prevalent non-English languages,
- the availability of alternative formats,
- large print, written translation, oral interpretation and other auxiliary aids and service

The toll-free and TTY/TDD telephone number of the MCO's member/customer service must be made available on all written information.

Nondiscrimination Provisions
Section 1557 of the Patient Protection and Affordable Care Act

Section 1557 and its implementing regulation (Section 1557) require covered entities to post – in their significant publications and communications – nondiscrimination notices in English, as well as taglines in at least the top 15 languages spoken by individuals with limited English proficiency (LEP) in the State(s) served.

The following are not significant publications communications under Section 1557:

- Radio or television ads;
- Identification cards (used to access benefits or services);
- Appointment cards;
- Business cards;
- Banners and banner-like ads;
- Envelopes; or
- Outdoor advertising, such as billboard ads.

Significant publications and communications that are small-sized, covered entities must post at least a nondiscrimination statement in English and taglines in at least the top two languages spoken by individuals with LEP of the State(s) served. Examples of documents that are "small-sized" include:

- Postcards,
- Tri-fold brochures, and
- Pamphlets.

Significant publications and significant communications that are presented on 8.5 x 11-inch paper are not considered "small-sized," even if the information conveyed fits on one side of a page.

Pre-Enrollment Activities (*see General Marketing Approaches and Activities)

Plans may use a full range of marketing approaches to promote their Plan. Marketing materials should include information necessary to enable the member to make an informed decision about enrollment based on the services provided.

The Plan may display marketing materials and conduct marketing activities at their sites, private locations and public buildings; however, they **may not** conduct outreach activities at the local DHS office or within fifty (50) feet of any location established by the state to conduct Medicaid eligibility and/or enrollment activities.

With the approval of EOHHS, Plans may conduct the following pre-enrollment activities:

- marketing campaigns including advertisements in newspapers, TV, radio, billboards, and other media;
- develop and distribute brochures and posters;
- sponsor health fairs and special events;
- conduct presentations

MEMBER INCENTIVES and/or REWARDS

Plans may offer incentives and/or rewards to their **enrolled members** to promote and reward healthy behaviors, e.g., compliance with immunizations, prenatal visits, or participating in disease management programs. Member rewards may only be offered for a member's participation in preventive care or completing a health-related activity. All incentives or incentive reward packages must be approved by EOHHS prior to use. The Plans are encouraged to consider items that can be used to promote healthy behaviors, e.g., toothbrushes, immunization schedules, or booklets to keep track of blood sugars.

- If the reward for healthy behavior is offered **within thirty (30) days** of an individual's enrollment, the value of the reward **may not exceed ten ($10.00) dollars**;

- If the reward for healthy behavior is offered **after thirty (30) days** of an individual's enrollment, the value of such gift **may not exceed twenty-five ($25.00) dollars**;

- The only occasions in which the value of the reward may exceed $25.00 is for discounted gym membership or for diapers provided to mothers who have given birth.

- Member rewards or incentives cannot be in the form of cash or an item that can be sold and converted to cash.

- Plans may sponsor raffles for its members, but they must be prior approved by EOHHS. The total value of gifts made available to winning tickets may not exceed $25.00 per winning ticket and a maximum of $75.00 for three (3) drawn tickets.

- **These incentives cannot be offered to any individual not yet enrolled in the Plan.**

Gifts

Plans **may not offer gifts or payments as an inducement** to enroll in their plan; however, some giveaways of nominal value may be allowed on a limited basis when approved by EOHHS prior to use.
Giveaways or trinkets of nominal value, such as pencils, magnets, plastic pillboxes, etc. may be used in Plan promotions. The value of each item should **not exceed $2.00**

- plans may provide gifts or incentives to prospective enrollees if those gifts or incentives are also provided to the general public and **do not exceed ten dollars ($10)** in value per individual gift or incentive.

- plans may not offer gifts of any kind or value to state employees or representatives of EOHHS such as consultants or navigators.

- neither Plans nor its staff shall provide cash to prospective or current enrollees, except for reimbursement of expenses and stipends, in an amount approved by EOHHS for participation on committees or advisory groups

PROHIBITED MARKETING ACTIVITIES

Plans are prohibited from distributing marketing or utilizing membership materials that have not been approved by EOHHS or that EOHHS has disapproved in writing.

EOHHS reserves the right to require an organization to withdraw advertising or other materials from distribution immediately or to publish, at the plan's expense, a retraction and/or clarification relating to any statements that may be interpreted as false, misleading or fraudulent or that the state deems violates these guidelines

An individual must approach or contact the Plan representative first to request information about the Plan. A Plan representative approaching an individual to offer information about the Plan is forbidden.

> For example: Health Fairs: a health plan representative is prohibited from approaching individuals to offer information, the individual must approach the health plan table or booth and request information.

Plans and/or Plan's Subcontractors Prohibited Activities

- inducing providers or employees of EOHHS, the Department of Human Services (DHS) or any other State Agency to reveal confidential information about beneficiaries or otherwise use such confidential information in a fraudulent manner to promote or enhance Plan
- seeking to influence enrollment with the sale of any private insurance to potential or current enrollees.
- sending direct mailings to low-income individuals who have not yet been determined eligible by the state
- conducting face-to-face outreach directed at current or potential enrollees, including direct or indirect door-to-door contact, telephone contact, or cold-call marketing
- sending deliberately confusing, misleading or fraudulent information about covered benefits.
- using health plan specific education materials at provider offices
- activities that mislead, confuse, or misrepresent health plan benefits

Activities that could mislead or confuse current or potential enrollees or that misrepresent EOHHS' managed care programs or the health plan are prohibited

- claiming recommendation or endorsement by the state or CMS or claiming the state or CMS recommends enrollment in your health plan;
- using terms, such as "Official U.S government", "Official Rhode Island government"
- using identifying labels such as: Medicaid, RIte Care, CSHCN, RIte Smiles, Rhody Health Partners" on envelopes or in other marketing materials in ways likely to confuse current or potential enrollees;
- using coupons or cards requesting additional information from current or prospective enrollees for

enrollment screening or to activate enrollment;

- omitting information necessary for the enrollee to make an informed choice, whether the individual specifically requests the information or not;
- making overstatements about the health plan's coverage;
- implying of perpetual coverage;
- incorrectly describing Medicaid and associated managed care plans' covered services;
- attempting to persuade or steer an enrolled member to disenroll from one health plan and enroll in another;
- not offering benefits approved by the state or CMS;
- indicating that benefits are "free" or at "no cost" to the enrollee; and
- implying that the individual's current or desired physician is affiliated with the health plan when that is not the case or his/her panel is closed to new patients.

Discriminatory activities

Any marketing, communication or activity whose purpose, in full or in part, is to discourage participation in their specific plan based on actual or perceived economic or health status.
Such activities include but are not limited to:

- attempts to enroll individuals from a high-income area if the plan is not making a comparable effort to enroll people from lower income areas in its service area or
- attempts to give enrollment priority to those in its service area who are newly eligible for Medicaid/EOHHS' managed care programs over other people
- engaging in outreach activities which target prospective enrollees based on health status.
- engaging in marketing activities that are non-compliant with applicable State and Federal civil rights*

**The Centers for Medicare & Medicaid Services (CMS) doesn't exclude, deny benefits to, or otherwise discriminate against any person on the basis of race, color, national origin, disability, sex, or age in admission to, participation in, or receipt of the services and benefits under any of its programs and activities, whether carried out by CMS directly or through a contractor or any other entity with which CMS arranges to carry out its programs and activities.*

Health Plan Marketing Representatives

- Health plan marketing representatives must clearly identify themselves as representatives of a specific Plan when engaging with a member or prospective member.

- Health plans may, however, explain that your organization has a contract with the State of Rhode Island

- Health Plan representatives may not identify themselves as an agent of:

    - Medicaid, RIte Care, CSHCN, RIte Smiles, Rhody Health Partners

    - the Federal government or,

    - represent themselves to be employees of EOHHS or DHS;

MATERIAL SUBMISSION and REVIEW PROCESS

Marketing and Member Communication Criteria

EOHHS reviews all marketing materials and member facing communications directed to current and potential enrollees to ensure compliance with applicable state, federal and contractual requirements.

The evaluation includes, but is not limited to:

- readability; using (1) reading level criteria as a guide, (2) low literacy standards and best practices
- presentation and font size
- content that is clear, concise, accurate and appropriate
- content that may be confusing, misleading or fraudulent
- content that is culturally competent
- covers the prescribed information mandated by the state for that specific document (e.g. Model Member Handbook)
- Explains information to the recipients in an understandable and readable manner
- Contains no prohibited marketing activities as described in the previous section.
- Health Plans must provide design layout copies of newsletters, advertisements, scripts, flyers, letters etc. as a condition of final EOHHS approval of such item(s).

Model Documents

In accordance with CMS Medicaid and CHIP Managed Care Final Rule (CMS-2390-F)

States are required to develop model handbook, Appeal and Grievance notice templates and definitions of key terms for use by the managed care plans. Plans are required to add Plan specific information however cannot alter or delete required information in the model documents. RI EOHHS will ensure Plans are in receipt of all model documents. Plans are required to submit for review and approval, to EOHHS, model documents containing Plan specific information.

Submission Criteria

Marketing and member communications will be reviewed by EOHHS for regulatory and contractual compliance, content accuracy and appropriateness.

EOHHS reviews submitted marketing materials and member communications that include:

- written materials written at no higher than 6.5 grade level using Flesch-Kincaid Readability Guide (http://readabilityformulas.com/flesch-grade-level-readability-formula.php)

- language assistance services information (when appropriate for the document)
  - all written materials must be made available in alternate formats upon member request (e.g. audio, large font, Braille)
  - translation services for enrollees and potential enrollees with limited English proficiency (LEP)
  - tag Lines in the prevalent non -English languages in the State
  - Nondiscrimination notice see [Attachment A]

Content that is:

- culturally competent
- clear, concise, contractually accurate, and appropriate
- includes prescribed information mandated by the state when appropriate
- free from confusing, misleading or fraudulent information
- appropriate heading and/or naming convention
- active and correct contact information, hyperlinks and URL

‘**File and Use’ Process**

Any member satisfaction surveys, questionnaires, forms, health assessments etc. **developed by the Plans** require review and approval by EOHHS.

**Please note
Member surveys, questionnaires, forms, health assessments etc. developed by NQCA, CHAPS etc. that cannot be altered by the Plan should be submitted to EOHHS and will be designated as ‘File and Use’.
clinical or member education materials designed to provide information on good health practices that have been approved by the Centers for Disease Control (CDC) or National Institutes of Health (NIH) do not require additional review by EOHHS but should be submitted for ‘File and Use’

Please note EOHHS ‘File and Use’ **NOT a CMS designation: ***CMS “File and Use Certification” process allows organizations to begin market distribution of certain marketing materials 5 calendar days after they have been submitted to CMS and requires that the CEO or CFO of the organization certify that the materials meet CMS requirements.*

PLAN SUBMISSION PROCESS

Health plans are contractually obligated to seek approval of all member/marketing materials prior to release. This Procedure will identify the process taken by EOHHS and participating plans when requesting approval of member materials. Adhering to these procedures will ensure efficient approvals and comprehensive communication

**each Plan should provide EOHHS Marketing contact(s)

Request Procedure:
Plans must submit all marketing and member communication with a completed Marketing Materials

Request for Approval Form [**ATTACHMENT B**]

- **Document Name:** Requests should be submitted with consecutive numbers. Include request number in document name and attach to email.

  Please note the Subject Line naming convention
  Standard: MKT_std_,<Plan>_ #_ <document name>
  Expedited: MKT_exp__,<Plan>_ #_ <document name>

Email should contain two (2) attachments:

- Member material needing approval
- Request for Approval form

Note: Please send only one approval request per email, except in the case that multiple items of similar purpose are being submitted (i.e. appeal letters).

If EOHHS requests changes to a document, Plans should resubmit the material with changes using the same request number.

Please note the Subject Line naming convention for revisions
MKT_std_,<Plan>_ #_ Revised_<document name>

Plans should submit, when possible, all documents for review in Word for ease of review via Track Changes

TO: OHHS.MCOOversight@ohhs.ri.gov
christine.dadali@ohhs.ri.gov
ave.houston@ohhs.ri.gov

EOHHS APPROVAL-REJECTION PROCESS

EOHHS Review Time Frame

EOHHS will acknowledge receipt of review request within 2 business days via email

***Plans are not allowed to use any Marketing or Member Communications that have not been approved by EOHHS**.

EOHHS will review materials:

- Standard (std): up to 30 business days from date of receipt
- Expedited (exp): up to 3 business days from date of receipt*

*EOHHS has the right to dispute expedited requests

Annual or quarterly documents such as Handbooks and newsletters should never be an expedited request.

Expedited requests are most often notifications of a change in benefits, formulary, provider network or an occurrence that has a time sensitive impact.

EOHHS will approve, edit or reject submitted materials and return to Plan with RI EOHHS Document Review Approval - Rejection Face Sheet [**ATTACHMENT C**]

Please note the Subject Line naming convention

Edits: MKT_ <Plan> _#_ <document name>_<eohhs reviewer initials> EDIT_<date>
Approval: MKT_ Plan _#_ <document name>_<eohhs reviewer initials> APP_<date>
Rejected: MKT_ Plan _#_ <document name>_<eohhs reviewer initials> REJ_<date>

**each Plan should provide EOHHS Marketing contact(s)

If EOHHS rejects or edits documents submitted by Plan; Plan should resubmit document in Word with Track changes and Approval/Rejection Face Sheet

EOHHS will review in accordance with standard turnaround time unless otherwise indicated.

ATTACHMENTS

Attachment A: Non-Discrimination Notice and Taglines

Attachment B: Marketing and Member Communications Request for Approval

Attachment C: RI EOHHS Approval/Rejection Face Sheet

GENERAL MARKETING APPROACHES AND ACTIVITIES

The Health Plans may use a full range of marketing approaches to:

- Promote the Health Plan,
- Inform Medicaid recipients eligible for a program that they may enroll and remain in a Health Plan.

With the approval of EOHHS the following **pre-enrollment activities** may be used to promote a Health Plan.

- Conduct mass media marketing campaigns such as advertisements in newspapers, TV, radio, billboards, health plan website, or yellow pages which announce participation in EOHHS's managed care programs
- Develop brochures, leaflets and posters to be distributed by the Plans or by third parties
- Sponsor health fairs and special events
- Distribute health educational materials to promote EOHHS' managed care programs and the Health Plan
- Conduct speaking engagements with presentation materials such as slides, charts, handouts, etc.

The Health Plan may conduct mass marketing and advertising activities which have been approved by the State that announce their participation in the RI Medicaid Managed Care & NEMT programs providing that they do NOT include:

- Mass mailings to low-income individuals who have not yet been determined by the State to be eligible for enrollment
- Door-to-door or telemarketing activities to low income individuals
- Confusing or misleading information about the coverage or benefits offered

The Health Plan may display marketing materials and conduct marketing activities at their sites, private locations and public buildings. These displays and activities must not occur within (50) fifty feet of any location established by the State to conduct eligibility and enrollment activities for the RI Medicaid Managed Care programs. **The Health Plan may not offer gifts of any kind or value to State employees or representatives of the EOHHS' managed care programs such as consultants, or Navigators.**

Marketing Plans must be made available to EOHHS upon request.

- Approval of content is specific to each medium. Thus, wording in a written advertisement intended as a flyer to members may not be used in a TV or radio ad. The Health Plan is required to submit separate requests for content approval to each media.
- Giveaways/trinkets of nominal value, such as pencils, magnets, plastic pillboxes, etc. may be used in health plan promotions. The value of each item should not exceed $2.00.

The marketing materials should include information necessary to enable the member to make an informed decision about enrollment based on the medical services provided. (e.g., a telephone number through which the enrollee may obtain a list of contracting providers and data on their location and availability, such as operation and accessibility of public transportation).

Health Plans may develop materials that educate potential enrollees about their specific health. The materials must be sent for review and approval. Approved materials may be made available at education events in the community such as health fairs. **These materials may not be used at provider offices.**

Face to Face Outreach

Face-to-face outreach by the Health Plan directed at participants or potential enrollees, including direct or indirect door-to-door contact, telephone contact, or other cold-call activities is strictly prohibited.

Cold call outreach is prohibited (both in person and by telephone) in all outreach activities. At no time shall a Health Plan representative approach an individual to offer education or information about the Health Plan. An individual must approach or contact the Health Plan representative directly and request information on the Health Plan. For example, at health fairs, a Health Plan representative is prohibited from approaching individuals to offer information on the Health Plan. An individual must approach the Health Plan table/booth and request information.

Pre-Enrollment

EOHHS must review and approve all pre-enrollment marketing activities and membership materials used by the Health Plans, and or their subcontractors, which mention or are specific to managed care programs.

The pre-enrollment marketing materials provided to potential Medicaid eligible people that have applied for enrollment into managed care and are interested in a Health Plan should include:

- Eligibility requirements that indicate an individual's eligibility is based on his/her eligibility for Medicaid and/or EOHHS' managed care programs only.
- A written statement that the Health Plan may neither refuse enrollment based on an individual's health status, or prior use or anticipated use of health services, nor impose restrictions for preexisting conditions.
- Description of benefits provided under the RIte Care and associated managed care programs, including any additional benefits approved by EOHHS.
- Information on application and enrollment procedures.

- How and where to obtain services from or through the Health Plan, including an explanation of the role of the PCP and prior authorization procedures, i.e., instructions for accessing emergency and urgently needed care.
- Notice that the Health Plan is authorized by law to terminate or refuse to renew its contract with the State and that the State may also choose not to renew its contract with the organization and that termination or non-renewal may result in termination of the individual's enrollment in the Health Plan. (Usually in the subscriber agreement).
- Disenrollment rights and procedures

Discussion of applicable premiums, co-payments and deductibles include:

- statements that premiums and benefit packages may change at the beginning of each contract period, but may not change during the contract period unless the change is to the advantage of the enrollee or is required by Federal or State law.