



TPMO Marketing and Communications Guidance

This bulletin is designed to help you understand CMS's Medicare marketing and communications rules and regulations.

The full details of the Medicare Communications and Marketing Guidelines can be found at: [Medicare Communications and Marketing Guidelines \(MCMG\) \(cms.gov\)](https://www.cms.gov/medicare-communications-and-marketing-guidelines)

Who do the CMS Medicare Communications and Marketing Guidelines apply to?

Among other stakeholders, the guidelines apply to all third-party marketing organizations (TPMOs).

These guidelines are only applicable to Medicare Advantage (MA) and Prescription Drug Plan (PDP) products. They do not apply to Affordable Care Act (ACA) products, Medicare Supplement, or other health insurance products.

What/Who are Third Party Marketing Organizations (TPMOs)?

CMS defines TPMO as ANY organization or individual, including independent agents and brokers, who are compensated to perform lead generation, marketing, sales, or enrollment-related functions as a part of the chain of MA enrollment. TPMOs may be a first tier, downstream, or related entity (FDRs).

Do the CMS Medicare marketing rules apply to lead vendors?

Yes. A lead vendor is considered a TPMO since they are compensated to perform lead generation and marketing services as part of the chain of MA enrollment.

How does CMS define “Marketing Materials”?

The CMS definition of “marketing,” as clarified in regulations §§422.2260 and 423.2260, is any communication or activity intended to influence a beneficiary's decision regarding MA or PDP enrollment or retention.

This definition is based on both "intent" and "content" standards.

The "intent" standard refers to materials that aim to draw a beneficiary's attention to a specific plan or influence their enrollment or retention decision.

The "content" standard relates to materials that include or address plan benefits, benefits structure, premiums, cost-sharing, measuring or ranking standards, or rewards and incentives.

A piece of material will meet the “intent” standard if its purpose is to:

- Draw a beneficiary’s attention to an MA or PDP plan or plans.
- Influence a beneficiary's decision-making process when making an MA or PDP plan selection
- Influence a beneficiary’s decision to stay enrolled in an MA or PDP plan (retention-based marketing.)

A piece of material will meet the “content” standard if it includes or addresses:

- The plan’s benefits, benefits structure, premiums, or cost sharing.
- Measuring or ranking standards, for example, Star ratings, plan comparisons, rewards, or incentives, as defined in § 422.134

Can you provide some examples of material that is deemed Communication?

1. “ABC Health is now offering Medicare Advantage coverage in Nowhere County. Call us at 1-800-MA-AGENTS for more information.”

While this would be considered a Communication piece, it may still require carrier review, as some carriers require that pieces that use their name be submitted for review. You may need to refer to carrier-specific marketing guidelines if you want to mention a carrier’s name in your marketing materials.

Please note: ANY use of a carrier’s logo requires carrier review and approval.

2. A letter is sent to enrollees to remind them to get their flu shot. The body of the letter says, “ABC Health enrollees can get their flu shot for \$0 copay at a network pharmacy...”

While the letter mentions cost sharing, the intent is not to steer the reader into selecting a plan or to stay with their current plan, but to encourage current enrollees to get a flu shot. The letter contains factual information and was provided only to current enrollees in the plan.

Can you provide some examples of material that is deemed Marketing?

1. “ABC Health Offers \$0 Premium Plans in Nowhere County”

The advertisement includes both the intent to draw the viewer’s attention to the plan and has content that indicates that zero-dollar premiums are available.

2. “Call us to learn about plans that can provide hearing and dental benefits, zero-dollar monthly premiums, and can even lower your Medicare Part B costs.”

While a specific plan is not mentioned by name, the ad’s intent is to draw the beneficiary to an MA plan or plans and the content mentions plan premiums, cost-sharing, and/or benefit information for plans being represented and sold by the third party.

NOTE: ANY mention of benefits will qualify the piece as Marketing, and therefore, will require submission to carrier(s) and CMS for review and approval PRIOR to use.

What are the requirements when a piece is defined as Marketing?

- Follow guidelines for pre-review for all carriers you are contracted with and selling on behalf of.
- Ensure the piece is properly filed in HPMS and approved by CMS. Generally carriers require a pre-review prior to filing in HPMS, although some carriers will review after filing in HPMS. Please verify with your carrier their preferred process for review and approval.
- Do not use a Marketing piece to sell an enrollment for a carrier that has not approved and opted-in to the use of the piece

What are the Marketing filing requirements?

- Marketing materials must be submitted to CMS via HPMS for each Plan Year.
- CMS generally opens HPMS filing for the next plan year in June.
- Materials filed for the next plan year June- Sept. may not be used until on or after 10/1.

- TPMOs must ensure the proper media type is selected upon submission.

How do I ensure my Marketing pieces go through carrier pre-review and filing in HPMS?

Work with your carriers and uplines to follow the appropriate process for carrier pre-review and CMS filing. Each carrier has its own process and requirements for review. Carriers generally provide marketing guidance for agents at least annually.

To file material with CMS, you can obtain consultant access to HPMS for your legal entities. After you obtain access to HPMS, you will need to contact your carriers to add your used ID to their process so they can see and opt-in to pieces you submit through HPMS.

Please see instructions from CMS located at: <https://www.cms.gov/Research-Statistics-Data-and-Systems/Computer-Data-and-Systems/HPMS/Downloads/SysInstr-for-Requesting-Consultant-Access-in-HPMS.pdf>

Depending on the carrier relationship with your upline and the hierarchy, you may be able to request assistance with filing through your upline and the agency at the top of the hierarchy. The agency at the top of the hierarchy can only file materials for carriers that you are in that agency's hierarchy, therefore, you may need to work with multiple agencies to file a piece across all of your contracted carriers. Therefore, we recommend obtaining your own access to CMS to file for all of your contracted carriers.

What if the marketing piece has already been filed and approved by another TPMO?

Many TPMOs use the same marketing materials. A TPMO that uses a piece of Marketing material that has already been approved through another TPMO must submit the piece via HPMS with a unique SMID. This means that every TPMO must submit marketing materials with their own separate unique SMID, even if the material had previously been approved.

Can I use a Marketing piece if it hasn't been approved by CMS and opted- into by Carriers?

No. You cannot use a Marketing piece until CMS has approved it and the carrier for which you are selling an enrollment has opted-in to the use of the piece through HPMS.

