Advertising Material Compliance
Medicare Advantage and Prescription Drug Plan Business

Important Considerations

All advertising materials must be reviewed for compliance. Submit self-created or third-party vendor materials to your upline's compliance team for review prior to use.

Does this material meet the CMS definition of "marketing"?

CMS classifies a material as "marketing" based on two standards: "intent" and "content." All advertising materials used by agents or produced by lead vendors essentially have "intent." A material has "content" if it addresses plan benefits, benefit structure, premiums, cost sharing, measuring or ranking standards, or rewards and incentives.

If a Material Meets the Definition of "Marketing"

- Downline agents and agencies generally cannot submit materials directly to carriers for preapproval and lack HPMS access to file with CMS. Marketing materials must be reviewed and routed through the appropriate upline, authorized submitter or other approved process.
- All applicable carriers — any carrier for whom a lead could be generated by the material — must preapprove the material before CMS filing or use.
- Once all carriers have preapproved the material, an authorized submitter (generally your top-of-hierarchy upline) must file it with CMS in the HPMS portal and select all applicable carriers as part of the filing.
- Review type depends on material type. Materials requiring prospective review move to "Approved" or "Disapproved" status. "File and Use" materials generally reach "Accepted" status after five calendar days.
- Once the material is approved/accepted in HPMS, all applicable carriers must opt in to it in HPMS.
- Only after all applicable carriers have opted in may the material be used.
- At the end of the material's life cycle (as defined by the plan year selected at filing), the HPMS submitter must mark it "No Longer In Use."
- The material must be identified with a Standardized Material ID (SMID) for identification, tracking and oversight purposes. The SMID must be present on the marketing material itself.

Red Flags: Signs of a Non-Compliant Material

The following are strong indicators that a material may be non-compliant. Treat any of these as a reason to pause and seek compliance review.

- High-pressure language or scare tactics (e.g., “Act NOW before it’s too late!”, countdown urgency, fear-based messaging).
- References to something other than health insurance plans (e.g., “employee benefits,” life insurance, financial products not tied to a health plan).
- The material is intentionally designed to resemble an official government notice — including government seals, official-looking fonts or language implying a government mandate.

Important Note for Lead Vendors

When using a lead vendor, conduct due diligence to confirm:

- Their advertising materials meet compliance guidelines.
- If they use “marketing” materials to generate leads, those materials are properly filed in HPMS and opted into by all carriers with whom you are contracted.
- The relationship has been disclosed to all applicable carriers, as required.

Disciplinary Action

If an agent or agency’s website includes non-compliant content, or if it includes “marketing” content that has not been properly submitted for carrier pre-review and filed in HPMS, the agent may face disciplinary action, **up to and including termination of their contract(s).** Agents are responsible for ensuring that all content on their websites — whether self-created or produced by a vendor — meets applicable compliance standards before it is published or used to generate leads.

Important Considerations for Websites

Required Disclaimers

All agent and agency websites must include all applicable disclaimers. At minimum, the following must appear prominently on the site:

- **Government non-endorsement statement:** A clear statement indicating that the agent or agency is not endorsed by, affiliated with or acting on behalf of the U.S. government or the federal Medicare program must be included on the website.
- **TPMO disclaimer:** “We do not offer every plan available in your area. Currently we represent [insert number of organizations] organizations which offer [insert number of plans] products in your area. Please contact Medicare.gov or 1-800-MEDICARE to get information on all of your options.”

Consent to Contact Mechanisms

Any electronic Permission to Contact (ePTC) form or other consent mechanism on an agent or agency website must satisfy the following requirements:

- **Required disclaimer language:** The consent disclaimer must clearly state the agent's name (or agency name), the types of plans that may be discussed (e.g., Medicare Advantage Plans, Prescription Drug Plans and/or Medicare Supplement Insurance) and the method(s) by which the consumer may be contacted (such as phone or email).
- **Additional Consents:** Certain contact methods, including auto-dialers, text messaging platforms, artificial or prerecorded voice messages, and ringless voicemail, may be subject to additional TCPA and state law requirements. Agents must comply with all applicable carrier requirements, company policies, and consent obligations before using these methods. Required disclosures must accurately reflect the contact methods used; disclaimer language alone does not satisfy all compliance requirements.
- **Placement:** The disclaimer must appear above the "Submit" button and must be displayed in a font size, weight and color that is easily readable (minimum equivalent to 12-point Times New Roman).
- **Prohibited data fields:** For Medicare Advantage and Prescription Drug Plan consent forms, the form must not require the consumer to provide age, date of birth, health status information (including disability status), Medicare Part A and Part B effective dates, gender or requested effective date.
- **Stand-alone forms:** If the consent form is a stand-alone electronic page (rather than a form embedded within a website that already displays the TPMO disclaimer), the full TPMO disclaimer must also be included on that page.

Accuracy of Website Content

Websites must not include any information that is misleading, confusing or materially inaccurate. This includes, but is not limited to, representations about plan benefits, costs, coverage areas, eligibility or enrollment processes. Agents are responsible for reviewing their website content regularly to confirm it remains accurate and consistent with current carrier and CMS guidelines.

Educational Content

If educational information is provided on a website (such as explanations of Medicare coverage, enrollment periods or plan types), it must be kept up to date and appropriate citations must be included to substantiate the information presented. Acceptable sources include CMS.gov, Medicare.gov and other official government publications. Outdated or uncited educational content may be treated as misleading and subject to compliance review.

See also: Lead Vendor Vetting Guide