Is it Marketing or a Communication?

Answer two questions. This decides what you must do before you use a material.

Almost everything you create to promote yourself or your agency has to be sorted into one of two buckets. **Marketing** has a long approval process. A **Communication** does not. Use the two questions below.

1 **Intent.** Is the material meant to get someone to choose, join, or stay in a Medicare plan, or to draw attention to a plan?

For agents and agencies the answer is almost always YES. Anything you create to find clients or promote your services has intent. Assume yes and move to question 2.

2 **Content.** Does the material include any of these? (The one to watch for.)

Benefits	Premiums	Cost sharing	Comparisons	Star Ratings
Any specific plan benefit: dental, vision, hearing, fitness, transportation, OTC, etc.	Any mention of premiums, even "as low as $0".	Any reference to copays or deductibles.	One plan compared to another.	Any reference to plan Star Ratings.

YES, at least one → **MARKETING**

Intent **plus** content. It must complete the **5-step approval process on page 2** (carrier pre-approval, HPMS filing, CMS acceptance or approval, carrier opt-in) **before distribution or use**. Then use the page 3 checklist.

NO, none of them → **COMMUNICATION**

No marketing content. It does **not** go through the HPMS filing process. It still has to follow the **page 3 checklist** and **still goes to your Compliance contact for review**. A carrier name or logo also needs that carrier's approval.

Quick examples

Marketing

- A flyer that lists dental, vision or hearing benefits, **even if generic** (for example, "Plans may have dental, vision and hearing")
- Even a general statement such as **"Plans may have premiums as low as $0"**
- An invitation to a sales event that mentions plan benefits

Communication

- A general explainer on how Medicare works, with no plan details
- A reminder of the enrollment dates with your name and contact information
- A thank-you note or newsletter with no plan details
- A post about who you are and the areas you serve

When in doubt, treat it as marketing and ask Compliance. CMS decides based on the audience, the timing and the context. Distributing a material with "marketing" content that has not gone through the required pre-approval and filing process can result in disciplinary action.

Marketing material: the 5-step process

A piece with marketing content cannot be used until every step is finished.

STOP. Do not publish, print, post, send or hand out the piece until all 5 steps are done. This usually takes **6 to 8 weeks or more**, so plan ahead.

1

Self-check Who: You

Finish the checklist on page 3 and fix every problem first. Then send the piece to your Compliance contact for review. Materials needing revisions get sent back and the clock starts over.

2

Carrier pre-approval Who: Each carrier

Send the final piece to every carrier the piece could generate leads for. That depends on your carrier contracts, the area where you will use it, and the benefits it advertises. Each carrier checks it against its own rules, may ask for changes, and approves separately.

Your Compliance contact will generally submit on your behalf.

3

HPMS filing Who: Filed in CMS's system (HPMS)

The material is uploaded to HPMS and the carriers that pre-approved it are selected. Double check the Standardized Material ID (SMID) and that you are uploading the right file. **Neither can be corrected after submission.**

Your Compliance contact will tell you who does the filing.

4

CMS acceptance or approval Who: CMS

Wait for the status to show **Accepted** (File and Use materials) or **Approved** (materials that need CMS review first). Track the status. If a piece is disapproved, revise it per the CMS comments and resubmit it under a new SMID.

5

Carrier opt-in Who: Each carrier

Every carrier you selected must opt in before you use or distribute the piece. Confirmations arrive by email to the person who completed the filing. **Keep each one.** Carriers can be added later in HPMS.

Only after step 5 can you use the piece. Keep the approval and opt-in records. If you change the piece afterward, even a little, start again at step 2.

Quick checklist before you use any material

The highest-risk issues. Aim for YES on every line, then send it to Compliance.

Mark each line, then **send the piece to your Compliance contact for review** (bottom of the page).

	YES	NO	NOT SURE
1. Marketing content has gone through the process — 42 CFR 422.2261			
This piece has **no marketing content** (page 1), **or** it has finished all 5 steps on page 2.	◯	◯	◯
2. Material is generic (no carrier branding) — 42 CFR 422.2262(a)(1)(i), 422.2261; carrier rules			
The piece has **no carrier names, brands or logos**, unless the carrier has given **written approval**.	◯	◯	◯
3. Content is clear and accurate — 42 CFR 422.2262(a)(1)(i), (xi), (xii)			
The content is clear, accurate and not misleading.	◯	◯	◯
4. It does not look like the government or use scare tactics — 42 CFR 422.2262(a)(1)(ix), (xvii), (a)(2); CMS guidance			
Nothing suggests it comes from, or is endorsed by, Medicare, CMS, Social Security, Medicaid or any government agency (no seals, flags or official-looking notices).	◯	◯	◯
It includes a disclaimer that indicates **no affiliation with or endorsement by** Medicare or the government.	◯	◯	◯
No scare tactics or false urgency ("Act now or lose your benefits"). Only real deadlines are stated.	◯	◯	◯
5. It identifies who is advertising and what it is			
The **agent or agency whose services are advertised is clearly identified by name**.	◯	◯	◯
Any title used is acceptable, such as "Licensed Insurance Agent" or "Licensed Sales Agent." The word **"Medicare" is not used in a title**, as it could improperly suggest affiliation with Medicare.	◯	◯	◯
It includes the disclaimer **"This is a solicitation for insurance"** (not required for educational event ads).	◯	◯	◯

Last step for EVERY piece: send it to Compliance.

Send every material to your **business unit Compliance point of contact** for a full review, **even if every answer is YES**. Do not use the piece until Compliance has reviewed it. Fix any NO or NOT SURE first, or tell Compliance about it. This checklist covers only the biggest risks and is not a full compliance review.

Want more detail? For more information, reference the **Material Compliance Quick Reference Guide** or the **Medicare Compliance Guide**.