

# Compliance Checklist

All guidance contained in this checklist is subject to Code of Federal Regulations: 42 CFR §§ 422.262 through 422.2274 and 423.2262 through 423.2274. This is not an all-inclusive list. Please be sure to send all materials to **compliance@pfsinsurance.com** for final review and approval prior to use.

## EACH AREA BELOW MUST BE ADDRESSED:

- |                  |   |
|------------------|---|
| Yes_____ No_____ | Is the material marketing or communications? <sub>1</sub>   |
| Yes_____ No_____ | If marketing, has the material been submitted to the carriers for pre-review? <sub>2</sub>  |
| Yes_____ No_____ | Is the material intended to draw a beneficiary's attention to an ma plan or plans and/or includes plan premiums cost sharing, or benefit information? |
| Yes_____ No_____ | If yes, has the material been submitted for CMS review?   |
| Yes_____ No_____ | If marketing, does the material include the marketing name of the carrier being advertised? <sub>3</sub>  |
| Yes_____ No_____ | Is the TPMO disclaimer present on TPMO's material(s)? <sub>4</sub>  |
| Yes_____ No_____ | Does the material clearly identify the agent, address, phone number or any other identifier required?   |
| Yes_____ No_____ | Are appropriate agent titles being used? <sub>5</sub>   |
| Yes_____ No_____ | Is the information provided up to date?   |
| Yes_____ No_____ | Is the term "senior" being used appropriately? <sub>6</sub>   |
| Yes_____ No_____ | Is the word "free" being used appropriately? <sub>7</sub>   |
| Yes_____ No_____ | Does the material include statistics, data, predictions or other information taken from a secondary source?   |
| Yes_____ No_____ | If yes, are all sources cited?  |
| Yes_____ No_____ | Is the "not affiliated with the U.S. Government or federal medicare program" disclaimer present when discussing any medicare related topic?           |
| Yes_____ No_____ | Is the medicare card id graphic present on the material? <sub>8</sub>   |
| Yes_____ No_____ | Does the material mimic or resemble a CMS or government agency design (e.g., American flag, eagle, red, white, and blue color scheme)? <sub>9</sub>   |
| Yes_____ No_____ | Are specific carrier logos/names present?   |

Yes\_\_\_\_\_ No\_\_\_\_\_ If yes, have you obtained permission from the carrier?

Yes\_\_\_\_\_ No\_\_\_\_\_ If brc, ebr, or contact forms (print or electronic) does the material comply with HIPAA law?<sup>10</sup>

Yes\_\_\_\_\_ No\_\_\_\_\_ If BRC, EBCR, or contact form (print or electronic) does the material include proper PTC statement and disclaimers?<sup>11</sup>

Yes\_\_\_\_\_ No\_\_\_\_\_ Are all disclaimers present in appropriate font size and format?<sup>12</sup>

## 1. Distinguishing Between MA/PDP Communications and MA/PDP Marketing Material Communications Material Definition:

Communications material provides information to consumers and/or members. While marketing materials are a subset of communications materials, the general practice is to refer to materials that do not meet the CMS definition of “marketing” as “communications” materials. In only very limited circumstances does CMS require a communications material be filed in HPMS. Refer to CMS regulations for guidance. If the advertisement is intended to draw a beneficiary's attention to an MA plan or plans **AND** include or address content regarding: plan premiums, cost sharing, or benefit information including those not mentioning a specific plan by name (as well as instances where such advertisements are made on behalf of multiple MA organizations **MUST** be submitted to CMS). This rule applies to telephonic conversations only, not face-to-face meetings.

**Marketing Material Definition** - Marketing materials are communications materials that meet both of the following standards for intent and content. If a material does not meet both standards of intent and content, it is not considered marketing material.

Intent: The purpose of the material is to do any of the following:

- Draw a consumer or member's attention to an MA plan or PDP or group of MA plans or PDPs.
- Influence a consumer or member's decision-making process when selecting an MA plan or PDP
- Influence a consumer or member's decision to stay enrolled in an MA plan or PDP (i.e., retention).

**Content:** Includes and/or addresses any of the following:

- Plan specific information about benefits or benefit structure. Effective July 10, 2023, per CMS, any material or activity that is distributed via any means that mentions any benefit will be considered marketing and must be submitted into HPMS. o According to CMS, high level mention of plan benefits such as “vision,” “dental,” and “hearing” will be considered marketing as of July 10, 2023. The use of “prescription drugs” will depend on context. When listed as a benefit, it will be deemed marketing. However, there may be instances in which its use is deemed communications (for example, when defining a PDP as a “Prescription Drug Plan.”
- Mention of benefits that are not generally included in most plans in the area where marketed or are limited in scope (e.g., SSBCI [Special Supplemental Benefits for the Chronically Ill] and VBID [Value Based Insurance Design]).
- Information about premiums and cost sharing (e.g., no premium, \$0 copays, and “get money back in your Social Security check”).
- Information on Star Ratings.
- Mention of Rewards and Incentives.
- Comparisons to other Plan(s)
- Rankings or measurements to other Plan(s)

## 2. Marketing materials developed by a TPMP for multiple MA organizations or plans:

MUST BE pre-reviewed by each MA organization, submitted to CMS in the Health Plan Management System (HPMS), and opted in by ALL PLANS available prior to distribution. Materials submitted to CMS outside of the pre-review process will be proactively opted out in HPMS.

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### 3. MA organization or marketing names:

Must be in 12-point font in print and may not be in the form of a disclaimer or fine print.

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### 4. TPMO DISCLAIMER (12-pt font):

- If you do not sell all carriers in a service area, “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, 1-800-MEDICARE, or your local State Health Insurance Program (SHIP) to get information on all of your options.”
  - If you sell all carriers in a service area, “Currently we represent [insert number of organizations] organizations which offer [insert number of plans] products in your area. You can always contact Medicare.gov, 1-800-MEDICARE, or your local State Health Insurance Program (SHIP) for help with plan choices.”
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### 5. Examples of permitted titles include:

- Sales Agent
  - Sales Representative
  - Independent Sales Agent
  - Independent Sales Representative
  - Licensed Agent
  - Licensed Sales Agent
  - Licensed Sales Representative
  - Licensed Insurance Representative
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### 6. Avoid using the term “Senior:”

Inadvertent discrimination occurs if an agent describes or implies that plans are only available for “seniors”, rather than to all Medicare eligible individuals. This discriminates against Medicare eligible consumers under age 65.

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### 7. CMS prohibits the use of the word “free” in the following situations:

1. When describing a zero-dollar premium (This is an inverse to the rule, outlined in the section above, about mandatory supplemental benefits.)
  2. When describing any reduction in premiums, deductibles, or cost-shares (such as a Part B premium buy-down, low-income subsidy, or dual eligibility)
  3. Cannot use “free” in reference to benefits covered by Original Medicare.
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### 8. MEDICARE ID CARD GRAPHIC:

Any marketing or communication material that uses an image of the Medicare ID Card must obtain approval from CMS.

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### 9. Use of government symbols/imagery/color scheme:

Consumer facing material cannot mimic or resemble a CMS or government agency design. Use of symbols (e.g., American flag, eagle or Medicare ID card) that may mislead or deceive the beneficiary into believing that he is interacting with a government entity is strictly prohibited.

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## 10. BRC, eBRC, or contact forms (print or electronic):

Except for contact information explicitly provided by the consumer for Medicare Supplement plan quotes, contact requests **may not** include a request for a date of birth, Part B effective date, Part A effective date, gender, and requested effective date. When generating leads for Medicare Supplement plans, the PTC (Permission to Contact) language must also include the statement, **“This is a solicitation for insurance”** or similar.

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## 11. BRC, eBRC, or contact forms (print or electronic) PTC guidance:

Please submit your material(s) to AdApproval for specific disclaimers/language to be included.  
Language is subject to change and guidance is provided on a case-by-case basis.

**A Permission to Contact. (PTC) Statement** must be included on all BRCs or request for contact information. The PTC statement must lead a consumer to reasonably understand:

- **Who** will be contacting the consumer (e.g., licensed sales agent or other approved title).
- **What** the agent will discuss with the consumer. This may be “Medicare insurance options” collectively, or the exact products selected by the consumer such as “Medicare Advantage plans”, “Medicare Part D Plans”, and/or “Medicare Supplement Insurance”. *Note: Permission given by the consumer for a specific product type (e.g. Medicare Supplement) may not be converted to PTC for any other product.*
- **How** the agent may contact the consumer (such as email, phone, or direct mail). The PTC statement elements (e.g. product types or contact methods) must match to any information requested from the consumers. For example, if fields are provided for phone and email, the PTC statement must indicate that the agent may contact the consumer by phone or email if provided by the consumer.

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## 12. DISCLAIMERS:

Should be displayed in a font size, color (contrast with background), and style that is reasonably readable by the average consumer in the intended audience.

Material Type	Turn-Around Time* (In Business Days**)
“Snail” Mail	3-5 days
Brochure	3-5 days
Email	3-5 days
Newspaper/Magazine	3-5 days
Poster/Flyer/Sign	3-5 days
Social Media	3-5 days
Newsletter	3-5 days
Sales Presentation	3-5 days
PowerPoint Presentation	3-5 days
Video	5-10 days
WebPage	1-3 days

\* AdApproval Compliance may adjust turn-around times based on volume and quantity of materials submitted. The TATs listed above apply ONLY for internal AdApproval.

\*\* Business days do not include Saturdays, Sundays, and weekdays designated as Holidays.

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