

Definitions (42 CFR §§ 422.2260, 423.2260)

Communications means activities and use of materials created or administered by the plans or any downstream entity to provide information to current and prospective enrollees. All activities and materials aimed at prospective and current enrollees, including their caregivers, are “communications” within the scope of the regulations at 42 CFR Parts 417, 422, and 423.

Note: Where the term enrollee is used, whether a current or prospective enrollee, the term encompasses representatives of the enrollee who are authorized to act on the enrollee’s behalf.

Marketing is a subset of communications and must, unless otherwise noted, adhere to all communication requirements. To be considered marketing, communications materials must meet both intent and content standards. In evaluating the intent of an activity or material, CMS will consider objective information including, but not limited to, the audience, timing, and other context of the activity or material, as well as other information communicated by the activity or material. The organization's stated intent will be reviewed but not solely relied upon.

Intent

Material or activities that CMS determines, as described above, are intended to:

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

Content

Materials or activities that include or address content regarding:

- The plan's benefits, benefits structure, premiums, or cost sharing,
- Measuring or ranking standards (for example, Star Ratings or plan comparisons), or
- Rewards and incentives as defined under 42 CFR § 422.134(a) (for MA and section 1876 cost plans only).

Below are examples to assist in identifying marketing versus communication.

1. A flyer reads “Swell Health is now offering Medicare Advantage coverage in Nowhere County. Call us at 1-800-BE-SWELL for more information.”
Marketing or Communication? Communication. While the intent is to draw a beneficiary’s attention to Swell Health, there is no marketing content.
2. A billboard reads “Swell Health Offers \$0 Premium Plans in Nowhere County”
Marketing or Communication? Marketing. The advertisement includes both the intent to draw the viewer’s attention to the plan and has content that mentions zero-dollar premiums being available.
3. A letter is sent to enrollees to remind them to get their flu shot. The body of the letter says, “Swell Health enrollees can get their flu shot for \$0 copay at a network pharmacy...”
Marketing or Communication? Communication. 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.
4. A third-party television commercial where an actor says: “Call us to hear about plans that can provide hearing and dental benefits, zero-dollar monthly premiums, and can even lower your Medicare Part B costs.”
Marketing or Communications? Marketing. While a specific plan is not mentioned by name, the commercial’s intent is to draw the beneficiary to a MA plan or plans and the content addresses plan premium, cost-sharing, and benefit information for plans being represented and sold by the third party.

CMS's regulations at 42 CFR §§ 422.2267(e) and 423.2267(e) designate all required materials and content as either communications or marketing. Plans will need to review regulations at 42 CFR §§ 422.2260 and 423.2260 and these guidelines to determine if a "Plan-Created Material" (i.e., something not listed as a required material in 42 CFR §§ 422.2267(e) and 423.2267(e)) is considered a communication or marketing material. Plans are also encouraged to consult with their Regional Office Account Manager or Marketing Reviewer about any marketing or communications questions.

Materials are static in nature, whereas activities are more dynamic. Interactions with a beneficiary could begin as a communication activity but become a marketing activity. For example, an enrollee calls the plan's customer service number for questions related to coverage under the plan in which the caller is currently enrolled; during the call, the enrollee asks about other health plan options, moving the call from communications to marketing. The plan must comply with all applicable requirements during communications and marketing activities. In cases where an interaction transitions from a communication activity to a marketing activity, the plan must comply with all applicable requirements for each type of activity during the relevant portion of the interaction.

Other Definitions

Age-ins - An individual who is aging into Medicare eligibility. Such individuals typically elect to enroll in a plan during the seven-month period consisting of three months before they turn age 65, the month they turn 65, and the three months after they turn 65.

Co-Branding - A relationship between two or more separate legal entities, where at least one party is a plan. Co-branding is when a plan displays the name(s) or brand(s) of the co-branding entity or entities on its materials to signify a business arrangement. Co-branding relationships are independent of the contract that the plan has with CMS. Plans are responsible for ensuring that co-branded materials include appropriate disclaimers and other model content as specified by CMS regulations at 42 CFR §§ 422.2267(e)(36) and 423.2267(e)(37) where applicable.

CMS Required Materials – Materials that are required under 42 CFR §§ 422.2267(e) and 423.2267(e)

Plan Created Materials – Materials created by plans, typically advertisements, that are not required under 42 CFR §§ 422.2267(e) and 423.2267(e).