

§ 423.2260 Definitions.

The definitions in this section apply for this subpart unless the context indicates otherwise.

Advertisement (Ad) means a read, written, visual, oral, watched, or heard bid for, or call to attention. Advertisements can be considered communication or marketing based on the intent and content of the message.

Alternate format means used to convey information to individuals with visual, speech, physical, hearing, and intellectual disabilities (for example, braille, large print, audio).

Banner means a type of advertisement feature typically used in television ads that is intended to be brief, and flashes limited information across a screen for the sole purpose of enticing a prospective enrollee to contact the Part D sponsor (for example, obtain more information) or to alert the viewer that information is forthcoming.

Banner-like advertisement is an advertisement that uses a banner-like feature, that is typically found in some media other than television (for example, outdoors and on the internet).

Communications means activities and use of materials created or administered by the Part D sponsor or any downstream entity to provide information to current and prospective enrollees. Marketing is a subset of communications.

Marketing means communications materials and activities that meet both the following standards for intent and content:

(1) Intended, as determined under paragraph (1)(ii) of this definition, to do any of the following:

(i)(A) Draw a beneficiary's attention to a Part D plan or plans.

(B) Influence a beneficiary's decision making process when making a Part D plan selection.

(C) Influence a beneficiary's decision to stay enrolled in a Part D plan (that is, retention-based marketing).

(ii) In evaluating the intent of an activity or material, CMS will consider objective information including, but not limited to, the audience of the activity or material, other information communicated by the activity or material, timing, and other context of the

activity or material and is not limited to the Part D sponsor's stated intent.

(2) Include or address content regarding any of the following:

(i) The plan's benefits, benefits structure, premiums or cost sharing.

(ii) Measuring or ranking standards (for example, Star Ratings or plan comparisons).

Outdoor advertising (ODA) means outdoor material intended to capture the attention of a passing audience (for example, billboards, signs attached to transportation vehicles). ODA may be a communication or marketing material.

Third-party marketing organization (TPMO) are organizations and individuals, including independent agents and brokers, who are compensated to perform lead generation, marketing, sales, and enrollment related functions as a part of the chain of enrollment (the steps taken by a beneficiary from becoming aware of a Part D plan or plans to making an enrollment decision). TPMOs may be a first tier, downstream or related entity (FDRs), as defined under § 423.4, but may also be entities that are not FDRs but provide services to a Part D sponsor or a Part D sponsor's FDR.

[86 FR 6121, Jan. 19, 2021, as amended at 87 FR 27901, May 9, 2022]

§ 423.2261 Submission, review, and distribution of materials.

(a) *General requirements.* Part D sponsors must submit all marketing materials, all election forms, and certain designated communications materials for CMS review.

(1) The Health Plan Management System (HPMS) Marketing Module is the primary system of record for the collection, review, and storage of materials that must be submitted for review.

(2) Materials must be submitted to the HPMS Marketing Module by the Part D sponsor or, where materials have been developed by a Third Party Marketing Organization for multiple Part D sponsors or plans, by a Third Party Marketing Organization with prior review of each Part D sponsor on whose behalf the materials were created or will be used.

(b) *CMS review of marketing materials and election forms.* Part D sponsors may