

Bulletin 340

MARKETING MEDICARE PART D AND MEDICARE ADVANTAGE PLANS

The Maine Bureau of Insurance has received complaints about alleged misconduct by licensed producers in connection with the marketing of Medicare Part D prescription drug plans being offered through private carriers pursuant to the Medicare Modernization Act. According to the Centers for Medicare and Medicaid Services (CMS) the Medicare Modernization Act does not preempt state producer licensing laws. Producers marketing Medicare Part D or Medicare Advantage products must have state licenses, and licensed producers must comply with Maine laws and regulations regarding producer activities as well as the federal Medicare Marketing Guidelines. CMS has advised that it will refer complaints it receives about producers licensed in this state to the Maine Bureau of Insurance.

This bulletin reminds producers marketing Medicare Part D plans, Medicare Advantage plans, Medicare supplement plans and other types of coverage to Medicare beneficiaries that they are subject to all laws and regulations of this state, including those relating to suitability of sale, and prohibitions against misrepresentation, churning, twisting, high pressure tactics, and cold lead advertising.

Cold lead advertising is defined as:

Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance producer or insurance company.¹

The Bureau expects Maine carriers and producers to treat Medicare beneficiaries with the utmost consideration. In particular, producers should be upfront and honest about saying that they are making a sales call and explaining what kind of insurance they sell. When advertising or soliciting appointments, carriers and producers should be exceptionally careful to identify the carrier and make it expressly clear that they are soliciting insurance. This is especially important if the advertisement includes a reference to Medicare Part D or offers to explain the new Medicare laws. A Medicare beneficiary should never have any reason to think that an insurance producer represents Medicare or any other government-related entity. Further, the Bureau views with a high degree of skepticism the use of a lead relating to Medicare Part D marketing activity to cross-sell other insurance products of any type. Allegations of misconduct related to marketing Medicare Part D, Medicare Advantage or Medicare supplement plans will be thoroughly investigated by this office. Any proven misconduct will be prosecuted under the laws of this state relating to producer licensing.

Carriers and producers should also review and comply with the CMS Medicare Marketing Guidelines. Among other things, these Guidelines prohibit soliciting Medicare beneficiaries door-to-door before receiving an invitation from the beneficiary to provide assistance in the beneficiary's residence. The Guidelines also require Medicare Part D organizations to comply with the National-Do-Not-Call Registry, honor "do not call again" requests, and abide by federal and state calling hours.

Producers who sell Medicare supplement coverage are reminded that Maine Insurance Rule Chapter 275(21) provides: "In recommending the purchase or replacement of any Medicare supplement policy or certificate a producer shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement." Producers should not use the new Medicare laws as an opportunity to "churn" Medicare supplement policies. Further, it is important for producers to explain and make sure potential enrollees understand the guarantee issue provisions in Rule 275. Medicare supplement carriers are also reminded that discrimination against disabled Medicare beneficiaries under age 65 is prohibited during Medigap open enrollment and guaranteed issue periods.

Finally, while most seniors are completely capable of handling their own affairs and making competent decisions on their own behalf, some are not. Maine law and CMS Guidelines both permit State Health Insurance Assistance Programs (SHIPs), Area Agencies on Aging (AAAs) and community-based organizations and their paid and volunteer staff to provide personalized, one-on-one counseling to help people with Medicare understand Medicare Part D coverage and compare plans, as well as provide clerical assistance to enable people with Medicare to enroll in plans that meet their needs. If

there is any question about competency, producers should encourage and facilitate the involvement of family members, SHIP counselors, legal counsel, or other appropriate assistance before selling a Medicare plan or any other insurance product. Producers should never attempt to dissuade Medicare beneficiaries from seeking further assistance from these types of resources.

1 See Bureau of Insurance Rule Chapter 275 § 20(B)(3), applicable to marketing Medicare supplement plans, and Bureau of Insurance Rule 425 § 22(B)(2), applicable to marketing long-term care insurance plans.

November 4, 2005 _____
Alessandro A. Iuppa
Superintendent of Insurance

NOTE: This bulletin is intended solely for informational purposes. It is not intended to set forth legal rights, duties or privileges nor is it intended to provide legal advice. Readers should consult applicable statutes and regulations and contact the Bureau of Insurance if additional information is needed