

STATE OF COLORADO

DEPARTMENT OF REGULATORY AGENCIES

DIVISION OF INSURANCE

1560 Broadway, Suite 850
Denver, Colorado 80202



Bulletin No. B-4.23

Marketing Medicare Part D, Advantage Plans, and Medicare Supplement Plans

I. Background and Purpose

The purpose of this bulletin is to provide clarification of acceptable and unacceptable marketing practices for Medicare Part D (PDP), Medicare Advantage (MA) and Medicare Supplement policies to Medicare beneficiaries. Marketing for PDP plans and MA plans with Part D drug coverage began October 1, 2005. The Centers for Medicare and Medicaid Services (CMS) released revised regulations September 15, 2008 for the marketing of 2009 PDP and MA plans. According to these regulations, only state-licensed insurance producers may engage in marketing activity. Therefore, Colorado insurance laws and regulations regarding producer activity apply to the marketing of PDP and MA plans, as well as federal laws and regulations. Complaints of alleged misconduct by licensed producers in regard to the marketing of Medicare plans will be shared by CMS and the Colorado Division of Insurance (Division).

Bulletins are the Division's interpretations of existing insurance law or general statements of Division policy. Bulletins themselves neither establish binding norms nor determine issues or rights.

II. Applicability and Scope

This bulletin applies to all carriers marketing PDP, MA and/or Medicare Supplement plans.

III. Division Position

A. Medicare Part D and Medicare Advantage

This bulletin reminds producers marketing PDP and MA plans that they are subject to all laws and regulations of this state, including those relating to suitability of sale; prohibitions against misrepresentation, churning, twisting, and high pressure tactics; and cold lead advertising. In addition, such producers are also subject to the provisions of the federal regulations on marketing under 42 CFR Parts 422 and 423. The Division will exercise its oversight and authority to ensure compliance of state and federal law and regulation.

The Medicare Improvements for Patients and Providers Act (MIPPA), which became law in July 2008, and the consequent subsequent federal regulations issued in September, made changes in the marketing of PDP and MA plans. One of the changes prohibits all calls to Medicare beneficiaries, without prior written or recorded verbal permission of the beneficiary. Carriers may mail solicitations to beneficiaries with reply cards, but they are not allowed to call and

verify the receipt of such materials. Any producer who accepts an appointment to sell a PDP or MA product that resulted from an unsolicited contact with a beneficiary will be found in violation of the prohibition against unsolicited contacts regardless of who made the initial contact, i.e. a lead generating company.

Prohibited producer activities under the federal guidance include but are not limited to:

1. Outbound marketing calls, unless a beneficiary requests a call or contact beforehand and such request is documented in writing by the signature of the beneficiary or by a voice recording prior to the marketing call being made.
2. Calls to confirm receipt of mailed materials.
3. Calls or contacts after a beneficiary attends a sale event, unless the beneficiary gives specific permission.
4. Unsolicited e-mails.
5. Approaching beneficiaries in common areas such as parking lots, hallways, lobbies, etc.
6. Sales activities in healthcare settings, except for pre-arranged appointments held in common areas such as cafeterias, community rooms, recreational rooms or conference rooms.
7. Cross-selling of any non-healthcare related products (such as annuities or life insurance) during any PDP or MA sales activity or presentation.
8. Failing to disclose prior to, or exceeding the scope of items identified to be discussed, at appointments. Additional products may be discussed if requested by the beneficiary and if they are discussed at a separate appointment, at least 48 hours later.
9. Distributing other than federally-approved Medicare or health educational materials (as identified in CMS marketing guidelines) at educational events. Producers may give out their business cards only upon a beneficiary's specific request.
10. Producers and plans may not provide or subsidize meals for prospective enrollees. Light drinks and snacks, not constituting a meal or components thereof, may be provided.

The Division expects 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 new Medicare laws and programs. A Medicare beneficiary should never have a reason to think that an insurance producer represents Medicare or any other government-related entity.

Allegations of misconduct related to marketing PDP and MA plans will be thoroughly investigated by the Division. Any proven misconduct will be subject to the administrative actions and/or penalties contained in Colorado insurance laws and regulations.

B. Medicare Supplement

This bulletin reminds producers marketing Medicare Supplement plans 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 in Colorado Insurance Regulation 4-3-1, Section 19(B)(3) on the marketing of Medicare Supplement policies 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.”

Producers who sell Medicare Supplement coverage are reminded that Colorado Insurance Regulation 4-3-1, Section 20(A) requires:

“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 Medicare laws or regulations or a complaint about a current policy as an opportunity to “churn” Medicare Supplement policies. Further, it is important for the producers to explain and make sure potential enrollees understand the guarantee issue provisions in Colorado Insurance Regulation 4-3-1. Medicare Supplement carriers are also reminded that discrimination against disabled Medicare beneficiaries under age 65 is prohibited during the Medicare Supplement open enrollment and guarantee issue periods.

Consumers who are enrolled in Medicare Supplement insurance products may enroll in any PDP plan they wish. They do not have to enroll in a PDP affiliated with the Medicare Supplement insurance product. However, consumers enrolled in a MA “coordinated care” product such as Kaiser Permanente or AARP Medicare Complete Plans offered by Secure Horizons must obtain their PDP coverage through that MA plan.

C. Assistance to Beneficiaries

Finally, while most seniors are completely capable of handling their own affairs and making competent decisions on their own behalf, some are not. Producers should be cognizant of the requirements for competency to enter into a contract. If there is any question about competency, producers should encourage and facilitate the involvement of family members, legal counsel, or other appropriate assistance before selling a Medicare plan or any other insurance product.

Colorado law and CMS regulations 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 PDP coverage and compare plans, as well as provide clerical assistance to enable people with Medicare to enroll in plans that meet their needs. Producers should never attempt to dissuade Medicare beneficiaries from seeking further assistance from these types of resources.

