



INFORMATIONAL BULLETIN

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Florida Department of Financial Services

Tom Gallagher, Chief Financial Officer

TO ALL COMPANIES AND INSURANCE AGENTS MARKETING MEDICARE PART D AND MEDICARE ADVANTAGE PLANS

Pursuant to the federal Medicare Modernization Act, effective October 1, 2005, the marketing of the new Medicare Part D prescription drug benefit began. Already, the Department of Financial Services has received inquiries indicating alleged misconduct by licensed agents in connection with the marketing of Medicare Part D prescription drug plans through private companies.

According to the federal Centers for Medicare and Medicaid Services (CMS), the Medicare Modernization Act does not preempt state insurance laws. Individuals marketing Medicare Part D or Medicare Advantage products must have state health insurance licenses and must comply with Florida laws and regulations regarding their activities, as well as the federal Medicare Marketing Guidelines promulgated by CMS. CMS has advised that it will refer complaints it receives about licensed and unlicensed agent activity in Florida to our Department.

This Informational Bulletin is to remind agents marketing Medicare Part D plans, Medicare Advantage plans, Medicare supplement plans, and other types of coverage to Medicare beneficiaries that agents are subject to all Florida laws and regulations, including those relating to suitability of the sale and prohibitions against misrepresentation, churning, twisting, high pressure tactics and deceptive advertising. Section 627.6743 (3)(c), Florida Statutes prohibits making use, directly or indirectly, of any method of marketing which fails to disclose in a conspicuous manner that the purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

The Department of Financial Services expects Florida insurers and agents to treat Medicare beneficiaries with the utmost consideration. Agents should be forthcoming and honest when they are making a sales call and explaining what type of insurance they are selling. When advertising or soliciting appointments, agents should clearly identify the insurance company they represent and disclose that they are soliciting insurance. A Medicare beneficiary should never have any reason to think that an insurance agent represents Medicare or any other government-related entity.

Allegations of non-licensure and misconduct related to marketing Medicare Part D, Medicare Advantage or Medicare supplement plans will be thoroughly investigated by this Department. Any proven violations will be aggressively prosecuted under the laws of this state relating to agent licensing and misconduct.

Companies and agents should 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 solicitors to comply with the National-Do-Not-Call Registry, honor "do not call again" requests, and abide by federal and state calling hours.

If there is any question about the competency of the Medicare beneficiary, agents should encourage and facilitate the involvement of family members, Florida Elder Affairs SHINE (Serving Health Insurance Needs of Elders), Area Agencies on Aging (AAAs) counselors, legal counsel or other appropriate assistance before selling a Medicare plan or any other insurance product. Most seniors are capable of handling their own affairs and making competent decisions but some are not. Florida law and CMS Guidelines both permit SHINE, AAA 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 the individual's needs. Agents should never attempt to dissuade Medicare beneficiaries from seeking further assistance from these types of agencies.

If you have any questions or need additional information, contact Division of Agent & Agency Services, Bureau of Investigation at (850) 413-3136.