



State of Vermont
Department of Financial Regulation
89 Main Street
Montpelier, VT 05620-3101

For consumer assistance:
[Banking] 888-568-4547
[Insurance] 800-964-1784
[Securities] 877-550-3907
www.dfr.vermont.gov

Insurance Bulletin No. 151 (Revised)

Marketing Medicare Part D and Medicare Advantage Plans

March 29, 2006 (Revised April 8, 2024)

The Insurance Division of the Vermont Department of Financial Regulation (Department) has received complaints about alleged misconduct by licensed producers in connection with the marketing of Medicare Part D prescription drug plans and Medicare Advantage plans being offered through private carriers under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Medicare Modernization Act).

Carriers and producers are reminded that 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 Vermont laws and regulations regarding producer activities as well as federal Medicare Marketing Guidelines. The Centers for Medicare and Medicaid Services (CMS) will refer complaints it receives about producers licensed in Vermont to the Department.

This Bulletin also 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 and the use of high-pressure tactics.

The Department expects Vermont licensed carriers and producers to treat Medicare beneficiaries with the utmost consideration. Producers should be direct, advising Medicare beneficiaries that they are making a sales call and explaining what kind of product they sell. When advertising or soliciting appointments, producers should be exceptionally careful to identify the carrier they represent and make it expressly clear that they are soliciting insurance. This is especially important if the advertisement includes a reference to Medicare Advantage Medicare Part D or offers to explain the new Medicare benefit. A Medicare beneficiary should never have any reason to believe that an insurance producer represents Medicare or any other government-related entity. Allegations of misconduct related to marketing Medicare Part D, Medicare Advantage or Medicare supplement plans will be thoroughly investigated by the



Department, and any misconduct will be prosecuted under Vermont laws relating to producer licensing.

Carriers and producers should also review and comply with the CMS Medicare Marketing Guidelines (<https://www.cms.gov/medicare/health-drug-plans/managed-care-marketing/medicare-guidelines>). Among other things, the 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, and honor "do not call again" requests.

Producers should take special note that there are categories of Medicare beneficiaries for whom the purchase of a Medicare Part D plan may be unsuitable. A producer must make reasonable efforts to determine if a Medicare beneficiary falls into one of these categories and, if so, take extra steps to determine if the purchase of the proposed Medicare Part D plan makes sense for the beneficiary.

The first category consists of Medicare beneficiaries who have health insurance from a company, union or government agency, whether they are still working or are retired. For many of these individuals, the coverage they currently have will be as good as or better than the prescription drug coverage under Medicare Part D. In addition, if such a Medicare beneficiary receives a statement from their company, union or government plan that the coverage they have is equivalent to Medicare's coverage, then they will be eligible to enroll later, should they choose to do so, without penalty.

The second category consists of "dual eligibles," beneficiaries who are enrolled in both Medicare and Medicaid. These individuals are automatically assigned by CMS to one of eleven designated Medicare Part D plans. An individual may choose to select a different plan from that group of eleven. Producers should document and be prepared to justify the sale of a plan to a dual eligible Medicare Beneficiary that is not one of the designated eleven plans. In addition, producers should explain that the purchase of a plan outside the eleven approved plans could result in additional premium costs to the enrollee.

The third category is Medicare beneficiaries enrolled in Vermont Medicaid Prescription Assistance (<https://dvha.vermont.gov/members/prescription-assistance>). These individuals are also automatically assigned to one of the eleven designated plans by the Department of Vermont Health Access. The issues for sale of Medicare Part D plans to this population are the same for the second category outlined above.

The fourth category includes Medicare beneficiaries who obtain their current drug coverage from the Veterans Administration (VA), Federal Employees Health Benefits (FEHB), or TRICARE. Prescription drug benefits from any of these plans are as good as or better than coverage available through Medicare Part D.



Producers who sell Medicare supplement coverage are reminded that Department Rule H-2009-04 (Revised) (<https://dfr.vermont.gov/reg-bul-ord/medicare-supplement-insurance-minimum-standards-regulations>) provides that: "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." The Rule also prohibits: "[k]nowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert an insurance policy or to take out a policy of insurance with another insurer."

Vermont 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 a Medicare beneficiary is confused about the program or wants additional assistance with it, or needs assistance deciding whether or not they need to purchase a Medicare Part D plan or which plan would better suit their needs, 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.

If producers have questions regarding the marketing guidelines set out by CMS, they should go to the CMS website for further information. For questions related to Medicare Part D and the sale of a plan to a Medicare beneficiary who is a dual eligible, a Vermont Medicaid Prescription Assistance beneficiary or a veteran, producers should contact the Office of Vermont Health Access member services at 1-800-250-8427.

DocuSigned by:

Kevin Gaffney

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Kevin Gaffney, Commissioner

4/9/2024

Date

