

**VERMONT DEPARTMENT OF BANKING, INSURANCE,  
SECURITIES AND HEALTH CARE ADMINISTRATION**

**Insurance Bulletin No. 151**

**March 29, 2006**

**MARKETING MEDICARE PART D AND MEDICARE ADVANTAGE PLANS**

The Insurance Division of the Vermont Department of Banking, Insurance, Securities and Health Care Administration 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.

Carriers and producers should note 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 the federal Medicare Marketing Guidelines. The Centers for Medicare and Medicaid Services (CMS) has advised that it will refer complaints it receives about producers licensed in this state to the Vermont Insurance Division.

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 and the use of high pressure tactics.

The Insurance Division expects Vermont licensed carriers and producers to treat Medicare beneficiaries with the utmost consideration. In particular, producers should be up front 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 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 this office. Any 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, 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 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 individual.

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 insurance 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 has received a statement from their company, union or government plan that the coverage they have now is as good as Medicare's coverage, then they will be eligible to enroll later, should they choose to do so, without penalty.

The second category consists of Medicare beneficiaries who are "dual eligibles." A dual eligible is someone who is enrolled in both Medicare and Medicaid. These individuals were auto-assigned by CMS to one of eleven designated 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 senior or person with a disability 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 seniors and persons with disabilities enrolled in VPharm, formerly known as VHAP RX, VScript and VScript Expanded. These individuals were also auto-assigned to one of the eleven designated plans by the State of Vermont. The issues for sale to this population are the same for the second category outlined above.

The fourth category includes individuals who obtain their current drug coverage from the Veterans Administration (VA), FEHB or from TRICARE. 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 Vermont Health Care Administration Rule H-2005-02 provides: "In recommending the purchase or replacement of any Medicare supplement policy or certificate, an agent 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.

Finally, while many Medicare beneficiaries are comfortable navigating through the choices presented to them under the Medicare Part D program, some are not. 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 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 at [www.CMS.gov](http://www.CMS.gov) 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 VPharm member or a veteran, producers should contact the Office of Vermont Health Access member services at 1-800-250-8427.

John P. Crowley, Commissioner