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Bulletin 2008-7

New Medicare Rules

To: Producers and Insurers selling Medicare private plans
From: D. Kent Michie, Insurance Commissioner
Date: November 13, 2008
Re: New Rules for the Marketing and Sales of Medicare Private Plans

New federal rules concerning the marketing and sales of Medicare private plans went into effect on October 1, 2008, pursuant to the Medicare Improvements for Patients and Providers Act of 2008. All producers must abide by the federal marketing and sales rules along with state law and regulatory provisions regarding producer activity, including state producer licensing laws and requirements, and state consumer protection laws.

In addition to state producer licensing laws, federal law requires that Medicare private plans:

- Must use state-licensed producers.
- Must comply with state appointment laws.
- Must report to the state the termination of any producer, including the reasons for such termination, in accordance with state law.
- Must ensure that producers are trained annually on Medicare rules and regulations specific to the plan products they intend to sell.
- Must comply with state requests for information about the performance of a licensed producer as part of a state investigation.

In addition to state law and regulatory provisions regarding producer activity, federal law also prohibits the following activities relating to the marketing of Medicare private plans:

- No cash or other monetary rebates as an inducement for enrollment.
- No offer of gifts to potential enrollees, unless they are of nominal value (\$15) and are offered to all potential enrollees whether or not they enroll.
- No meals to potential enrollees, regardless of value.
- No door-to-door solicitations or other unsolicited means of direct contact, include cold-calling a beneficiary without the beneficiary initiating the contact.
- No marketing, or cross-selling, of non-health care related products during a Medicare prescription drug plan or Medicare Advantage plan sales activity or presentation.
- No marketing of any health care related product during a marketing appointment beyond the scope agreed upon by the beneficiary, and documented, prior to the appointment.
- No marketing of any health related lines of business not identified prior to an in-home appointment without a separate appointment that may not be scheduled until 48 hours after the initial appointment.

- No sales presentations, or distribution or acceptance of enrollment forms, in health care settings such as provider offices (except in common areas).
- No sales presentations, or distribution or acceptance of plan applications, at educational events.

The federal guidelines allow State Health Insurance Information Programs (SHIIP), Area Agencies on Aging (AAA), and community-based organizations to counsel Medicare beneficiaries in all types of available plans, and assist enrollment into Medicare plans. Producers should be exceptionally careful to identify the insurer they represent and be clear they are marketing insurance, and not mislead a potential enrollee into thinking the producer represents Medicare or any other government-related entity.

The Center for Medicare Services (CMS) and the Department will jointly refer complaints regarding violations of federal and state laws and rules. Allegations of misconduct will be investigated. Failure to comply with these requirements may result in penalties as described in Utah Code Annotated 31A-2-308.

Dated this 13th day of November, 2008.



D. Kent Michie
Commissioner